Quarterly Report

OF THE

ATTORNEY GENERAL

OF

ALABAMA

FOR THE PERIOD

FROM APRIL 1, 1967

THROUGH JUNE 30, 1967

VOLUME 127

MacDONALD GALLION, Attorney General

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QUARTERLY REPORT

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For the Period

From April 1, 1967

Through June 30, 1967

TO THE STATE, COUNTY, AND MUNICIPAL OFFICERS OF ALABAMA:

This Quarterly Report of the Attorney General of Alabama, which includes all official opinions rendered by the Attorney General from April 1, 1967 through June 30, 1967, is published in compliance with the provisions of Title 55, Section 228, Code of Alabama 1940.

Under this section of the Code, I am required to send seven copies of this Quarterly Report to each judge of probate in the State and the judge of probate, in turn, is required to deliver one copy each to the clerk of the circuit court, the sheriff, the tax collector, the tax assessor, the county superintendent of education, and the deputy or county solicitor of his county. This section also requires that I send a copy of this report to each circuit solicitor and the chief executive officer of each incorporated municipality in the State.

The office of the Attorney General is anxious to render prompt and efficient service to the State, county, and municipal officials. If you have any suggestions to make regarding the improvement of the service, I shall be glad to hear from you.

Sincerely,

MacDONALD GALLION
Attorney General

MacDONALD GALLION

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James T. Hardin

Agriculture and Industries:

George O. Miller

OPINIONS

April 5, 1967

Honorable James H. Bradford
Mayor
Town of Leighton
Leighton, Alabama

Bonds — Municipalities — Words and Phrases.

1. A municipal bond issue for the construction of a sewer system which is payable from the revenues of an existing water system and of the new sewer system creates a municipal "debt" within the meaning of the Constitution of Alabama 1901, Section 225.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated March 7, 1967, is as follows:

"The Town of Leighton, Alabama, does not have a sanitary sewer system, but does have a municipal water system that is unencumbered and is revenue producing.

"The town, through its engineering consultant, has filed a program for sewerage improvements to the Farmers Home Administration for a direct association sewerage loan of $323,000.00 at 4½% interest and has received a memorandum of tentative commitment for the same.

"The commitment states that the loan is to be repaid over a period of 40 years, and will be evidenced by a revenue bond and secured by a pledge of revenue from the existing water system and the proposed sewer system, the user being billed on a combined monthly statement, and will be further secured by a statutory mortgage lien on both systems; no property assessment is proposed.

"The above procedure is to be carried out through proper ordinances, and the revenue bond to be issued under the authority of Title 37, Chapter 6, 1940 Code of Alabama, as amended, and is to be purchased directly by the Farmers Home Administration acting for the United States of America.

"The sewer system will greatly benefit our town, and the proposed financing procedure appears to be the only feasible one, but a ruling is requested as to whether or not said loan would be a debt of the town that would come under Article 12, Sections 222 and 225 of the Constitution of 1901, since existing revenue property and the revenue of existing property, ie., the water system, is to be pledged to the payment of the bond, as well as the newly created sewer system and its revenue, and a statutory mortgage lien is to be placed on both systems;

the said bond specifically states that it is payable solely from the revenues derived from the operation of the system. This question arises in the light of the Town of Opp cases, 163 So. 332, Williams vs. Montgomery, 74 So. (2d) 814, Town of Georgiana, 93 So. (2d) 493, and 93 So. (2d) 923, and others, and the fact that revenue from an existing property is also pledged to the payment of the bond.

"Your opinion is further requested as to whether or not Constitutional Amendment 107 has application in this case, despite the fact that the only system now owned by the municipality is the water system, and may or may not be construed as being extended, enlarged or improved by virtue of the proposed bond issue.

"It is believed that if the bond sale was strictly for the purpose of creating a sanitary sewer system and only revenue from that system was used for repayment of the bond that the same would not constitute an indebtedness within the constitutional limitation, but in view of the facts and proposed procedure outlined above, the Town of Leighton, Alabama would appreciate your ruling on this matter at your very earliest convenience. "Mr. Edgar Waldrep, Chief of the Community Facilities Service, FHA, Room 717, Aronov Building, 474 South Court Street, Montgomery, Alabama has the complete file in this matter and will be glad to furnish you any information that you might need to assist in your determination."

The amount of indebtedness which a municipality may incur is fixed by the Constitution of Alabama 1901, Section 225. See **Taxpayers and Citizens of the Town of Georgiana v. Town of Georgiana et al.,** 265 Ala. 654, 93 So. 2d 493.

The Supreme Court of Alabama has held that where a municipal bond issue for improvement of water and sewer systems would create a lien upon and be payable from revenues derived from exisiting systems, a debt within the meaning of Section 225, supra, would be created. **Town of Opp, et al. v. Donaldson,** 230 Ala. 689, 163 So. 332, and authorities there cited.

The **Opp** case, supra, was decided prior to the adoption of Amendment 107 to the Constitution of Alabama 1901, which said Amendment reads as follows:

"Revenue bonds and other revenue securities at any time issued by a municipality for the purpose of extending, enlarging or improving any water, sewer, gas or electric system then owned by such municipality shall not be deemed to constitute bonds or indebtedness of such municipality within the meaning of sections 222 and 225 of this Constitution if by their terms such bonds or other securities are not made a charge on the general credit or tax revenues of the issuing municipality and are

made payable solely out of revenues derived from the operation of any one or more of such systems."

Since, under the facts presented, the proceeds of the proposed bond issue will be used solely for the construction of the Sanitary Sewer System and no part thereof is to be used to extend, enlarge or improve the existing water system, the provisions of Amendment 107, supra, are not applicable.

Therefore, I am of the opinion that said proposed bond issue will create a debt of the Town of Leighton within the meaning of Section 225, supra.

Very truly yours,
MacDONALD GALLION
Attorney General

April 6, 1967

Mr. Bill Cassity
Administrator
Ala. Liquefied Petroleum Gas Board
660 Adams Avenue
Montgomery, Alabama

LP Gas Board — Permit Fees — Corporations.

1. An Alabama corporation authorized to do an LP gas business in Alabama does not have to obtain a new permit fee from the LP Gas Board where it changes its corporate name, so long as this change is properly recorded and legally authorized and it is made known to the LP Gas Board.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an official opinion of this office bearing date of February 17, 1967, is as follows:

"A question has arisen which needs some clarification and an official opinion of your office.

"It has developed that a corporation holding a permit to do business in the state of Alabama under the name of XYZ Gas Company, Inc., owned by an out-of-state corporation, files with the Secretary of State a name change on this corporation, from XYZ Gas Company, Inc., to YZ Gas Company, Inc. There are no changes whatever in the stockholders.

"The question is, 'Does the changing of the name of this corporation change the corporate structure of the corporation

and does it require them to obtain a new permit from the LP-Gas Board under the new name of the corporation?'

"An opinion of the Attorney General, dated September 10, 1963, states that a permit is not transferrable. Under this basis, we have understood that a new permit would be needed.

"We have advised the out-of-state corporation involved that a new permit will be needed, but we feel that we need to have this opinion in writing and on file in this office.

"We will appreciate your giving us an opinion on this matter at your earliest convenience."

The answer to your question is in the negative.

Based on your statement that the XYZ Gas Co., Inc., which is an Alabama corporation, has changed its name, but has made no other changes in its corporate structure, I am of the opinion that no additional permit would be required. Title 10, Chapter 1, Code of Alabama 1940, as Recompiled 1958; **Ala. LP Gas Comm. v. West Ala. Butane Co., et al.,** 28 Ala. 406, 178 So. 2d 636.

Title 10, Chapter 1, Code of Alabama 1940, as Recompiled 1958, permits changes in the name of the corporation, changes in the corporate purpose, and changes in stockholders and other aspects of the corporate structure so long as these changes are recorded with the Probate Judge of the counties wherein the corporation was organized or where it is doing business, or with the Secretary of State, whichever may be appropriate under the laws of Alabama.

However, these changes must also be communicated to the Alabama LP Gas Board, so that it may take the necessary action to correct its records, otherwise, the Board would have no knowledge of the changes nor whether they had been properly recorded so that notice of such changes could be publicly known.

I am of the further opinion that should the legally authorized change in the corporation name of an Alabama corporation holding a permit from the LP Gas Board be unknown to the Board, then it has a perfect right to require a permit fee of such corporation.

This seems to me to be a reasonable approach to the problem inasmuch as the company doing business in Alabama should have an economic interest in keeping the Board informed of any authorized changes in its corporate make-up, and to prevent the Board from assessing an additional permit fee against it.

Also, unless the company did so keep the Board informed of the changes in its corporate structure, how else would the Board know that this was a company already permitted to do business in Alabama, or a new company that had not obtained a permit from the Board. Of course, it would not, because the Board cannot maintain a continuing surveillance of the sixty-seven Probate Judges' offices in this state. That would be an impossible administrative duty not contemplated by the Legislature when it created the LP Gas Board to regulate the LP Gas industry in Alabama.

To sum up, it is my opinion that a legally authorized change in the corporate name of an Alabama corporation doing an LP gas business in Alabama properly communicated to the LP Gas Board would not authorize the Board to collect a new and additional permit fee, but, if the Board has no knowledge of such change, it has no alternative but to require the payment of a permit fee for the privilege of conducting an LP gas business in Alabama.

Very truly yours,
MacDONALD GALLION
Attorney General

April 6, 1967

Honorable W. H. Knight
Judge of Probate, Hale County
Greensboro, Alabama

Taxation — Exemptions — Licenses — Veterans.

1. Under the provisions of Title 51, Section 852, Code of Alabama 1940, as amended by Act No. 233, Acts of Alabama 1953, page 299, a veteran who served in the Armed Forces of the United States between December 7, 1941 and the termination of World War II by the signing of a definitive treaty of peace is entitled to the exemption from business and license taxes granted in Section 852, supra, assuming the other requirements thereof are satisfied.

2. The Treaty of Peace with Japan was signed on September 8, 1951, and peace with Germany was proclaimed by the President after a joint resolution passed by Congress on October 19, 1951.

Opinion by Assistant Attorney General Livingston.

Dear Sir:

Your request for an official opinion dated March 20, 1967, is as follows:

> "I would appreciate clarification of parts of the Acts dealing with license exemptions for certain disabled veterans who entered service after December 31, 1946, and who were discharged therefrom prior to the Korean Conflict which began June 24, 1950. There are several rulings from your office over the years treating with these exemptions, but we do not find answered specifically the points we would appreciate a ruling on.
> "We refer to Title 51, Section 852, Code of Alabama, 1940, as amended by Act No. 564, General Acts 1943, page 562, which reads as follows:

" 'Every bona fide permanent resident of the State of Alabama who served as an enlisted man in the United States army, navy or marine corps during the World War between April 6, 1917, and November 11, 1918, or in the Spanish American War between April 21, 1896, and July 4, 1902 ***** or any soldier, sailor or other persons serving in the armed forces of the United States between December 7, 1941, **and the termination of the existing war by the signing of a definitive treaty of peace,** and who, at time of his application for license, as hereinafter provided for, shall be physically disabled to the extent of twenty-five percent or more, shall upon sufficient identification and upon sufficient proof of such disability be exempt from business or occupational license taxes to the extent, and subject to the conditions hereinafter specified *****'

"In an opinion dated March 31, 1952, although this specific question was not an issue, Attorney General Si Garrett expresses the opinion that:

" 'The Legislature intended to have eligibility for certain tax exemptions continue to be effective for those then (referring to the time of enactment of Act 698 amending Act 353—(1947) entering the service until the termination of World War II by the signing of a definitive treaty of peace with Germany.'

"As you know a treaty of peace with Japan was not signed until September 8, 1951, and the joint resolution by Congress dealing with Germany was passed October 19, 1951.

"In another opinion by Attorney General Si Garrett dated February 26, 1954, he rendered an opinion which stated:

" 'A person who entered the armed forces subsequent to World War II and was honorably discharged therefrom prior to the Korean Conflict, which began on June 24, 1950, is exempt from the payment of poll taxes.'

"This ruling seems to have been in conflict with an opinion of the Attorney General dated April 5, 1948.

"Insofar as I can determine the benefit given by Attorney General Si Garrett's opinion here has never been extended to cover the license exemption for certain disabled veterans serving during the period between World War II and the beginning of the Korean Conflict.

"Does a veteran whose only service was during the 'twilight' period between December 31, 1946, and June 24, 1950, qualify for the exemption of $25.00, subject to meeting other requirements of the law?

"An affirmative answer would seem to be in line with an opinion of the Supreme Court of Alabama (State v. Gibson) which said:

" 'Though the actual hostilities between this country and our enemies ceased in 1945, we were still at war. Our armies, navies, and air forces, exercising our war power, were still abroad and no peace terms had been made with our enemies. This status prevailed with respect to Japan until the treaty of peace was signed September 8, 1951, and with respect to Germany until peace was proclaimed by the President after a joint resolution passed by Congress October 19, 1951.'

"We would appreciate an opinion from you which overrules and clarifies any past decisions pertaining to dates of active duty requirements for eligibility for the $25.00 license exemption."

While it is true that Title 51, Section 852, Code of Alabama, 1940, was amended by Act No. 564, Acts of Alabama 1943, as mentioned in your letter, Section 852 was again amended by Act No. 233, Acts of Alabama 1953, page 299 and provides, in part, as follows:

"Section 1. Section 852 of Title 51 of the Code of Alabama, 1940, as amended by an Act approved July 10, 1943, is amended to read: 'Every bona fide permanent resident of the State of Alabama who served in the United States Army, Navy, or Marine Corps during World War I between April 6, 1917, and November 11, 1918, or in the Spanish-American War between April 21, 1896 and July 4, 1902, or any soldier, sailor or other person **serving in the armed forces of the United States between December 7, 1941 and the termination of World War II by the signing of a definitive treaty of peace,** or at any other time past, present or future, when the United States was, is or shall be engaged in hostilities with any foreign state, whether as a result of a declared war or not, and who, at the time of his application for license, as hereinafter provided for, shall be physically disabled to the extent of twenty-five per cent or more, shall, upon sufficient identification and upon sufficient proof of such disability and upon sufficient proof of being a permanent resident of this State, and upon the production of an honorable discharge or other proof of termination of honorable service from the United States Army, Navy, or Marine Corps during World War I, the Spanish-American War, or from the armed services of the United States, within the respective limits hereinabove prescribed, be exempt from business or occupational license taxes to the extent, and subject to the conditions hereinafter specified . . . . ' " (Emphasis added.)

The Supreme Court of Alabama in the case of **State v. Gibson,** 258 Ala. 512, 64 So. 2d 75, stated as follows:

"That the United States was 'at war' with a foreign state in 1949 seems clear to us. Though the actual hostilities between this country and our enemies ceased in 1945, we were still at war. Our armies, navies, and air forces, exercising our war

power, were still abroad and no peace terms had been made with our enemies. This status prevailed with respect to Japan until the treaty of peace was signed September 8, 1951, and with respect to Germany until peace was proclaimed by the President after a joint resolution passed by Congress Octobe. 19, 1951."

From the above, it is apparent that the Alabama Supreme Court has declared that World War II was not terminated with Japan until September 8, 1951 and not terminated with Germany until October 19, 1951.

Therefore, it is my opinion that a veteran whose only military service was between December 31, 1946 and June 24, 1950 is entitled to the exemption granted in Section 852, supra, as amended, assuming that he satisfied the other requirements thereof. Quarterly Report of the Attorney General, Volume 66, page 24 and page 102.

Very truly yours,
MacDONALD GALLION
Attorney General

April 17, 1967

Hon. Donald F. Colquett
City Attorney
City of Opp
P. O. Box 88
Opp, Alabama 36467

Department of Public Safety — Statutes.

Act No. 434, Acts of Alabama 1966, Special Session, approved September 12, 1966, discussed.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an opinion of this office bearing date of March 8, 1967, is as follows:

"The Mayor of the City of Opp has asked me to get your opinion on a matter pertaining to Act No. 434, Special Session of 1966, approved September 12, 1966, and Title 36, Section #1, subsection (1).

"By a duly adopted Ordinance of the Mayor and City Council of the City of Opp, adopted April 21, 1960, the City created a rescue squad and made the same a part of or subdivision of its fire department and by said ordinance declared the same to be carrying out a governmental function. It further provided

that ' . . . in carrying on its work, however, the members of the Rescue Squad shall serve without compensation from the City of Opp and the organization shall be supported by contributions (public) in the purchase of equipment and the costs of operation of said Squad.'

"The public has furnished funds via contributions necessary to purchase two new ambulances (the Squad furnishes the only available ambulance service in Opp and parts of Covington and Coffee County near Opp) and to purchase a new equipment truck. This truck is equipped with a portable generator (electric) resuscitator, scuba diving tanks and equipment, oxygen-tanks and regulators and other life saving equipment necessary for use at the scene of emergencies, disasters or civil defense emergencies. (This Squad is not a Civil Defense Organization)

"It is believed that an equipment vehicle used by our rescue squad in such manner going to the scene of such an emergency is on just as much of an emergency mission as an ambulance being used in an emergency. Such vehicle transporting such equipment to the scene of a drowning or to the home of the user of an iron lung, when needed to supply electricity from its portable generator (when usual supply of electricity has been cut off) is certainly on an emergency mission.

"Under the provisions of Act No. 434, and Title 36, Sec. 1, subsec. (1), may such rescue squad equipment vehicle use red lighted lamps when performing an emergency mission such as described above, under the sentence in act 434 which states 'The color of the lighted lamp exhibited by police vehicles shall be blue and the color of lighted lamp exhibited by fire department and **other authorized emergency vehicles** to include ambulances, shall be red'; and under the provision of Title 36, Sec. 1, subsec. (1) 'AUTHORIZED EMERGENCY VEHICLE. Vehicles of fire department (fire patrol) police vehicles, and such ambulances and emergency vehicles of municipal departments or public service corporations as are **designated** or **authorized** by the director of public safety or the chief of police of an incorporated city.'

"It seems clear under the general definitions contained in Title 36, Section 1, et seq., that rescue squad ambulances when being used on emergencies may use red warning beacons and be within the provisions of Act No. 434, which amends Title 36, Section 19(b) but it is not clear whether this applies to equipment vehicles of a rescue squad when on an emergency mission. Our Rescue Squad equipment vehicle is presently equipped with red warning beacons or 'lighted lamps' and would like to continue to use such beacons or lamps when doing emergency work.
"At first blush, this question may not seem to be of any great

importance, but, it not only affects Opp's rescue squad, but some 50 or more similar rescue organizations scattered throughout the State of Alabama, who own and operate such vehicles and have them equipped with red lights or warning beacons and use such vehicles with red lights burning when on emergency missions. Many of these squads are organized as a part of their city's fire departments, some are organized as benevolent societies incorporated under the provisions of Title 10, Section 124 et seq. or under the provisions of Title 10, Sections 303 et seq.; other squads in the state are organized under the provisions of the civil defense statutes of Alabama. However they are organized their sole reason for existence is to provide rescue service not elsewhere available to the public. In areas where such squads operate, they are held in high public esteem as evidenced by the fact that in Opp a community has donated approximately $25,000.00 in funds for the purchase of the Squad's equipment and several thousand more for operating expenses of the squad in the past 7 years. A similar record for public support can be cited for Anniston, Gadsden, Centre, Florala, Greenville, Monroe County, Andalusia, Enterprise, Fort Payne, Cullman, Huntsville and many other cities in Alabama.

"Hence, under the acts quoted or any other applicable statutes of the State, may a red lighted lamp be used by a rescue squad equipment vehicle when it is being used on a mission of emergency nature. May the director of public safety or police chiefs of incorporated cities designate or authorize such use on such vehicles?"

Act No. 434, Acts of Alabama 1966, Special Session, approved September 12, 1966, provides, in pertnent part, as follows:

"(b) The driver of a vehicle upon a highway shall yield the right-of-way to police, fire department and other authorized emergency vehicles when the latter are equipped with at least one lighted lamp exhibiting a colored light as hereinafter provided visible under normal atmospheric conditions from a distance of five hundred (500) feet to the front of such vehicle and when such vehicle is giving an audible signal by siren, bell, ululating multi-toned horns, or other electronic siren type device . . . . The color of the lighted lamp exhibited by fire department and other authorized emergency vehicles to include ambulances, shall be red."

Title 36, Section 1, subsection (1), Code of Alabama 1940, as recompiled 1958, provides as follows:

" 'Authorized emergency vehicle.' Vehicles of the fire department (fire patrol), police vehicles, and such ambulances and emergency vehicles of municipal departments or public service

corporations as are designated or authorized by the director of public safety or the chief of police of an incorporated city."

In your letter to me, you stated that the City of Opp, Alabama, by duly adopted ordinance dated April 21, 1960, created, within and as a part of the fire department of said City, a rescue squad. This rescue squad is equipped with two ambulances and an emergency vehicle which is fully stocked to meet most any kind of emergency in the City of Opp, Alabama.

Your question to me is, can these vehicles display a red lighted lamp when engaged in the service envisioned by the previously mentioned ordinance of the City of Opp, Alabama?

My answer is in the affirmative.

Both Act No. 434, supra, and Section 1, subsection (1), supra, authorize ambulances to display a red lighted lamp when being used as an ambulance on an emergency run.

The problem is the other emergency vehicle mentioned in your letter.

As I understand from your letter, this vehicle is equipped with all sorts of life saving equipment, including resuscitators, oxygen, portable generator, and scuba diving tanks and equipment. This vehicle by ordinance, also, has been designated a fire department vehicle.

Based on the ordinance of the City of Opp, Alabama, and the use to which this vehicle is to be put, I conclude that it is an authorized emergency vehicle of the fire department of the City of Opp, Alabama, and as such, is authorized to display a red lighted lamp when being used for an emergency purpose.

Very truly yours,
MacDONALD GALLION
Attorney General

April 19, 1967

Honorable Frederick P. Whiddon
President, University of South Alabama
307 Gaillard Drive
Mobile, Alabama

Taxation — Ad valorem Taxes.

State agency may clear title to property which it has purchased by paying ad valorem taxes assessed against the property prior to date of purchase.

Opinion by Assistant Attorney General Payne.

Dear Sir:

Your request for an official opinion of this office bearing date of April 4, 1967, reads as follows:

> "This letter is a follow up on our conversation of March 29, 1967, conerning the paying of ad valorem tax by the University of South Alabama on property purchased on January 4, 1967, from the Federal Housing Administration.
>
> "A monthly tax payment, held in escrow, is required by the Federal Housing Administration. The F. H. A. officials stated at the sale closing, that this tax at the rate of the original assessment would be required of the University of South Alabama until a notice of a change was received from the Mobile County Tax Assessor.
>
> "However, since the University is a state institution, there should be a remission of tax.
>
> "The payments made to date amount to $11,666.16, as scheduled below:

February 1, 1967	$3,888.72
March 1, 1967	3,888.72
April 1, 1967	3,888.72
Total	$11,666.16"

At first blush, your letter may give the impression that a state institution, University of South Alabama, is being required to pay ad valorem taxes assessed against its property which the University purchased on January 4, 1967. However, applying certain legal principles and practical considerations to the situation dispels this impression.

There can be no question but that the tax payments made in escrow are for payment of ad valorem taxes for the year 1967. The law day for this year was October 1, 1966, and when the University of South Alabama purchased the property from the Federal Housing Administration on January 4, 1967, the tax lien had become affixed to the property as of the law day. The real property of the F. H. A. is subject to being taxed ad valorem by the State of Alabama. Title 12, U. S. C. A., §1714. This being the case, the property owned by F .H. A. on October 1, 1966, was subject to the lien and payment of the taxes assessed against the property for the year 1967.

When the University purchased the property on January 4, 1967, it did so with the burden of the ad valorem lien attached to it. But it should be borne in mind, that the lien attached to the property and not against the State or its agency, University of South Alabama. Quarterly Report of the Attorney General, Volume 102, page 9. The purchase by University did not extinguish the lien on the property. Quarterly Report of the Attorney General, Volume 31, page 5. Furthermore, the purchase of the property by the state agency or institution,

subsequent to October 1, 1966, did not change the fixation of the lien from F. H. A. to the owner (University of South Alabama) as of January 4, 1967. Quarterly Report of Attorney General, Volume 115, page 88.

It is apparent from your letter that the purchase agreement included the escrow tax payments as a part of the total price to be paid by University to the F. H. A. in order to acquire the property in question. This is made more evident by the fact that F. H. A. officials stated as a part of the "closing" that the tax would be required at the rate of the original assessment until a notice of change was received from the Mobile County Tax Assessor. Of course, no tax will be assessable or due by University after the tax year 1967, assuming that the property is being used exclusively for educational purposes.

It is my opinion, based upon Quarterly Reports of Attorney General, Volume 102, page 9 and Volumes 31, page 5, that University of South Alabama is legally authorized to make the escrow tax payments in order to clear the title to the property and remove the lien of the state and county for the tax. In Quarterly Report of Attorney General, Volume 102, supra, it was noted:

> "In an opinion addressed to Honorable C. E. Sellers, Tax Collector, Pike County, found in Quarterly Report of Attorney General, Vol. 31, page 5, this office ruled that a **county board of Education, a State agency, could pay taxes upon property it had acquired with a tax lien thereon.** This opinion was based on the theory that **the lien did not attach against the county board of education,** an agency of the State of Alabama, but on the contrary **the lien attached against the land,** and **in order to remove the cloud from the title of such real estate, the county board of education could pay the delinquent taxes thereon."** (Emphasis added.)

As I understand it, the purchase agreement between F. H. A. and University of South Alabama, is a valid commitment and, therefore, there is no basis for a remission of the tax.

Very truly yours,
MacDONALD GALLION
Attorney General

April 21, 1967

Honorable Carl E. Maye
City Attorney
City of Opelika
Opelika, Alabama

Assessments — Condemnation — Municipalities — Taxation.

1. A municipality is authorized to levy an assessment against property to pay the cost of a sewer improve-

ment where an easement has been condemned across the property to construct the improvement.

2. A landowner is entitled to appeal from an assessment against his property for a municipal public improvement on the ground that the assessment exceeds the increased value of his property caused by the improvement.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated March 10, 1967, is as follows:

> "The City of Opelika, Alabama, requests an official opinion based on the following statement:
>
> "1. Can a Municipality levy an assessment against property for public improvement (sewerage) under Chapter 11 of Title 37 of the Code of Alabama, 1940, as amended and revised, where the City condemned an easement across the property served, and the landowner was awarded substantial damages. The easement was for the sewer line which serves the property in question.
>
> "It is the contention of the landowner that a judicial determination has been made that the property was damaged by reason of the sewer line, and therefore there can be no increase in the value derived from the installation of the sewer. The theory of the landowner is that you cannot be damaged and benefitted at the same time."

Title 37, Section 525, Code of Alabama 1940, reads in part as follows:

> "When . . . improvements consist of a sanitary or storm water sewer or sewers, or a sanitary or storm water sewer system, including sewage treatment or sewage disposal plants the cost of any part thereof may be assessed in fair proportion against the frontage of the property drained by said sewer system, or against all the lots or parcels of land lying within the district drained, served, or benefited, but the assessment shall not exceed the increased value of such property by reason of the special benefits derived from the improvement . . . . "

Section 525, supra, authorizes a municipality to assess the cost of the sewer improvement in fair proportion against the frontage of the property served by the sewer system. **Anderson et al., v. City of Vestavia Hills,** 272, Ala. 128, 130 So. 2d 341.

The owner of any property so assessed may appeal such assessment to the Circuit Court or court of like jurisdiction. Title 37, Section 545, Code of Alabama 1940. On appeal, the court will decrease the amount of the assessment against the appellant's property if it is

shown that the assessment exceeds the increased value of the property caused by the improvement. **City of Florence v. Barnett,** 22 Ala. App. 218, 114 So. 284.

The contention of the landowner, stated in your request, presents a question of fact which will be decided by the court if said landowner appeals from the assessment under the provisions of Section 545, supra. However, such contention is not material to the authority of the municipality to levy the assessment.

Therefore, I am of the opinion that, under the facts presented, the City of Opelika is authorized to levy the assessment contemplated by your request.

Very truly yours,
MacDONALD GALLION
Attorney General

May 1, 1967

Dr. Ernest Stone

State Superintendent of Education
Department of Education
Montgomery, Alabama 36104

Schools — Scholarships — Loans — Vending Machines.

The State Board of Education is authorized to empower the various institutions under its supervision to set up scholarship funds to enable worthy students to continue their education through grants and loans from said funds, said funds to be composed of grants, gifts, and institutional receipts from vending machines placed in operation at such institutions.

Opinion by Assistant Attorney General Hall.

Dear Dr. Stone:

Your request for an official opinion bearing date of March 31, 1967, is as follows:

"The State Board of Education, at its meeting on March 24, 1967, adopted the following resolution:

" 'WHEREAS, there presently exists a continuing need for funds to be made available for loans and scholarships at the various institutions under the supervision of the State Board of Education; and

" 'WHEREAS, there are some incomes to the various institutions through vending machine receipts, and such receipts are for institutional purposes;

"'NOW THEREFORE BE IT RESOLVED That the State Board of Education declare scholarships and loans to be an institutional purpose and request an opinion of the Attorney General as to whether or not such may be legally done; and

"'BE IT FURTHER RESOLVED That the said institutions be empowered to set up scholarship funds to enable worthy students to continue their education through grants and loans from said funds, said funds to be composed of grants, gifts, and institutional receipts from vending machines should the Attorney General rule in the affirmative on the question.

"'BE IT FURTHER RESOLVED That such scholarship funds shall be carried on the books of each institution as "scholarship fund," and that complete and detailed accounting shall be made of such fund.'

"I am hereby officially requesting that a ruling be given in this matter. Your response to this request will be much appreciated."

After a diligent search, I am unable to find any legal objection to the State Board of Education's empowering the various institutions under its supervision to set up scholarship funds to enable worthy students to continue their education through grants and loans from said funds, said funds to be composed of grants, gifts and institutional receipts from vending machines placed in operation at such institutions. Therefore, in my opinion, the State Board of Education may provide for scholarship and loan funds, as proposed in your request. See Quarterly Report of Attorney General, Volume 76, Page 63 at Page 68.

Very truly yours,
MacDONALD GALLION
Attorney General

May 3, 1967

Hon. Bertice E. Latham
County Attorney
Cherokee County
Courthouse Annex
Centre, Alabama

Counties — Offices & Officers.

1. The Board of Revenue of Cherokee County, Alabama, is prohibited by law from employing one of its members to render services to said county.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an official opinion of this office, dated March 29, 1967, is as follows:

"This letter is in connection with our discussion yesterday regarding the employment of a member of the Board of Revenue on a project that is financed jointly by the County and the Federal government.

"My question for your consideration and opinion is this:

"Is it permissible for a Board of Revenue to employ one of its members to work on a project that is financed by that County in the amount of 20% and by the Federal government in the amount of 80% where the said Board of Revenue is in charge of letting and approving all contracts in connection with said project and where the said Board of Revenue is in charge of carrying the project to completion?

"Your prompt opinion on this question will be greatly appreciated."

The answer to your question is in the negative.

Title 41, Section 211, Code of Alabama 1940, as Recompiled 1958, provides, in pertinent part, as follows:

" * * * members of the court of county commissioners or board of revenue, or any other state or county officer who takes any contract, for work or services of the county, or is employed in any way under such contract, or sells any goods or supplies to the county, or is in any wise pecuniarily interested in any such contract or sale, as principal or agent, must, on conviction, be fined not less than fifty nor more than one thousand dollars, and may be imprisoned in the county jail, or sentenced to hard labor for the county for not exceeding twelve months; * * * "

There are numerous opinions of this office construing this particular section of the Alabama Code; a few of these opinions are cited for your information: Hon. Herman S. Plunkett, Member, Board of Revenue, Cullman, Alabama, dated August 3, 1960; Hon. O. D. Alsobrook, Probate Judge, Chambers County, Alabama, dated July 30, 1962; and Hon. J. P. King, Probate Judge, Blount County, Alabama, dated November 30, 1965.

You will note that the cited opinions have consistently held that a county officer, and particularly a member of a county Board of Revenue, cannot contract with the county to furnish services or goods to said county.

Consequently, it is my opinion that in the situation presented by your letter, the member of the Board of Revenue of Cherokee County, Alabama would be, in effect, contracting with Cherokee County to furnish his services to said county, which is prohibited.

Very truly yours,
MacDONALD GALLION
Attorney General

May 3, 1967

Hon. Walter S. Houseal
Superintendent
State Dept. of Insurance
Montgomery, Alabama
Insurance.

1. A contract for furnishing ambulance service to individuals is not a contract of insurance, but a contract for service.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an official opinion of this office bearing date of February 23, 1967, is as follows:

> "We are enclosing a proposed contract to be sold by Patrick's County-Wide Ambulance Service, whereby they agree to furnish ambulance service for residents of Montgomery County at a fixed rate of 85c per month, to be paid annually. (Proposed contract attached)
>
> "Please give me your opinion as to whether Patrick's is doing an insurance business and is thus subject to the enclosed laws of the State of Alabama."

In my opinion the contract for ambulance service would not be an insurance business within the purview of the laws of Alabama.

The definition of a "contract of insurance" as set out in Title 28, Section 2, Code of Alabama 1940, as Recompiled 1958, is as follows:

> "A contract of insurance is an agreement, expressed or implied, by which one party, for a consideration, promises to pay money, or its equivalent, or to do some act of value to the assured, upon the destruction or injury of something in which the other party has an insurable interest."

The statutory definition itself, and the cases construing the definition section of the Code, i.e., Section 2, supra, envision a loss to be incurred by the policyholder or insured. See **Commonwealth v. Wetherbee,** 105 Mass. 149; **Supreme Commandery, etc. v. Ainsworth,** 71 Ala. 436.

In the business arrangement set out in your letter, the contract is for a service to be performed, not an indemnity for a loss that might occur. See **Cook v. Wright,** 171 So. 686, 177 Miss. 644.

Therefore, it is my opinion that Mr. Patrick would not be engaging in the insurance business contrary to the laws of Alabama by providing an ambulance service on a contract basis to anyone within a fifty (50) mile radius of Montgomery, Alabama.

Very truly yours,
MacDONALD GALLION
Attorney General

May 4, 1967

Honorable George W. Jones
Mayor, Town of Ragland
P. O. Box 33
Ragland, Alabama

Motor Vehicle Licenses — Distributions.

1. Under Title 51, Section 704, as amended in 1961, Code of Alabama 1940, Recompiled 1958 (see 1965 Cumulative Pocket Part), the ad valorem tax on motor vehicles should be paid in the county in this State **"from" which such motor vehicles are used and operated,** where the owner is a firm or corporation.

2. Under Title 51, Section 713, as amended, Code of Alabama 1940, Recompiled 1958 (see 1965 Cumulative Pocket Part), after the expenses for collecting the motor vehicle licenses have been paid, the remaining receipts therefrom shall be distributed — thirty-seven percent to the state and sixty-three percent to the incorporated city or town in which the owner of the motor vehicle "resides." In the event that the owner does not reside in an incorporated town or city, then sixty-three percent to the county, where the owner resides in the county and outside of any such city or town.

3. Where the ad valorem taxes and the licenses have been improperly paid in a county other than the county "from" which the motor vehicle is used or operated or other than in which the owner "resides," and no steps have been taken to rectify such improper payments, then the probate judge is bound by the records of the tax assessor and tax collector, and where such records show the address of the owner to be in an incorporated city or town in such county, then he is required to make the distribution according to such records.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion of this office bearing date of March 23, 1967, reads as follows:

> "We have a situation in St. Clair County which involves the failure of the Probate Judge to distribute to the various municipalities the share of the revenue due to said cities as set out and provided in Title 51 Sec. 713 of the 1958 Recompiled Code of the State of Alabama.
>
> "In the past years a number of fleet truck lines have been buying their tags and paying their license in St. Clair County. At

least one of said lines have given their address in the Town of Ragland, St. Clair County, Alabama. The Probate Judge has refused to distribute to the Town of Ragland the 63% of the revenue as set out in Section 713, and contrary to said section he has put said money in the county treasury.

"This matter has been discussed with the Probate Judge and he has advised that even though the licensee has given the address as Ragland, Alabama that he knew in fact that said truck line did not actually reside in said town, and therefore is refusing to pay over to the town the revenue which would appear to be due to our town from the records in the Probate Office.

"I would appreciate you advising whether the town of Ragland is entitled to the 63% of the revenue as provided for in Title 51 Section 713 of the 1958 Recompiled Code of Alabama when the records reveal that subject licensee is a resident of the municipality."

Information secured from the Field and License Divisions of the Revenue Department, as well as from the registration records, reveals that the carriers to which you refer are corporations, and that they have no terminal or established places of business in St. Clair County, but do have places of business in other counties in this State. Moreover, there is no evidence showing that the trucks involved have used the highways of St. Clair County to any appreciable extent during the tax year.

Under the above circumstances, and if they are the facts, then it does not appear that St. Clair County is the proper county in which the trucks should have been assessed and the ad valorem taxes and motor vehicle license taxes paid. In this respect two statutes are very applicable to the situation, namely, Sections 704 and 713 of Title 51, Code of Alabama 1940, Recompiled 1958, both of which Sections were last amended in 1961.

Under Section 704, as amended in 1961, supra (see 1965 Pocket Part to Title 51), motor vehicles are to be assessed for ad valorem taxation, where the owner is an individual, in the county of his residence. Where the owner is a firm or a corporation, they are to be assessed in the county **"from" which the motor vehicle is used or operated.**

In the case of **Brown v. Dixie Highway Express, Inc.,** 270 Ala. 46, 116 So. 2d 369, the Supreme Court of this State gave Title 51, Section 704, Code of Alabama 1940, and prior to the 1961 Amendment thereto, a very literal construction by pointing out that the controlling words of said Section prior to said amendment were "used or operated." In so construing the statute, the Court held, under the circumstances, that the common carrier involved could properly purchase the license tags for its trucks in a county where the trucks used the highways to a "substan-

tial extent," even though the carrier had a terminal and a place of business in another county. However, the Legislature thereafter and in 1961 amended Section 704, and changed the wording thereof to provide that in the case of a motor vehicle owned by a firm or corporation that the vehicle shall be assessed for ad valorem taxation in the office of the tax assessor of the county **"from" which such motor vehicle is used or operated.** In other words, the Legislature in this respect, and in amending the statute in 1961, changed the word "in" to "from."

The phrase "from which," now contained in the statute appears to clearly denote a place from which the motor vehicle usually leaves, and to which it eventually returns in the normal course of its operations; that is, the county from which the motor vehicle is principally used in this state.

Distribution of license tax receipts from motor vehicles is provided for in Title 51, Section 713, as amended (1965 Pocket Part), supra. This Section, as amended, provides in essence, that after the expenses to be paid to the State Department of Revenue for administering and enforcing the motor vehicle license tax laws are deducted, that the remainder of such receipts be divided and distributed — **thirty-seven percent to the state and sixty-three percent to the incorporated city or town in which the owner of the vehicle resides.** In the event that the owner of the vehicle (and very obviously from the plain wording of the statute in that event only) does not reside in an incorporated city or town, then sixty-three percent to the county in which the owner of the motor vehicle resides.

In **Cole v. Gullatt,** 241 Ala. 669, 4 So. 2d 412, and in the case of a transportation company which maintained its offices and place of business in Columbus, Georgia, but which conducted its business principally on the streets and highways located in Phenix City, Alabama, the Supreme Court of Alabama construed the word "resident" as used in Section 713 to mean the principal place where the company was doing business in this state. Thus, the Court determined that the motor vehicles used in the business were principally used in Phenix City, although they made some occasional trips into the county, and that the city was entitled to the distribution of the license tax receipts as is provided in Section 713.

It is obvious in this case from the information furnished by you and also from that ascertained from further inquiry and investigation that the common carriers to which you refer do not "reside" in St. Clair County, nor are the trucks involved principally used and operated by them in that county. This leads to the conclusion that these motor vehicles were not properly assessesd or assessed in accordance with the provisions of Section 704, as amended, supra, for ad valorem tax purposes for the tax year in St. Clair County.

Under similar circumstances as the above, this office in a ruling made to Honorable Joe W. Adkins, Mayor, Town of Ashville, dated February 8, 1966 (see copy attached), held that under Section 713,

supra, the distribution should be made under the circumstances from the records of the tax assessor and the tax collector. This being so, and as the address given by the particular carrier to which you refer in your inquiry is in the City of Ragland, Alabama, and the records obviously so show, then under such ruling the Judge of Probate in making the distribution of the receipts from the licenses would be bound by such records, and under Section 713 is required to distribute sixty-three percent of said proceeds, after the expenses for collection have been deducted, to the city.

Yours very truly,
MacDONALD GALLION
Attorney General

May 8, 1967

Dr. Ira L. Myers
State Health Officer
Department of Public Health
State Office Building
Montgomery, Alabama 36104

Health and Health Department.

Cold drink dispensing machines, so designed that interior food contact surfaces, valves, paddles, and storage tanks are dismountable for inspection and cleaning constitute "food handling establishments," as defined in the Bulletin of the Alabama State Board of Health Regulations Governing the Manufacture, Preparation, Display and Service of Foods, Confections, and Beverages; and a permit would be required for their operation if they be located in premises not otherwise subject to the State Committee of Public Health food regulations.

Opinion by Assistant Attorney General Robert F. Miller.

Dear Sir:

Your request for an official opinion from this office dated February 24, 1967, is as follows:

> "This office has received a number of requests from County Health Departments regarding the approval and use of semi-frozen flavored drink dispensing machines.
>
> "The basic design of this type machine consists of a cylindrical barrel, surrounded by refrigeration coils, in which the product is frozen to an ice slurry or semi-frozen consistency. The product mix, consisting of fruit flavors as well as carbonated

mix, is stored in tanks which are integral parts of the machine. The machine parts are built into an upright cabinet with the dispensing valve and control handle on the exterior for drawing into paper cups by the operator. Interior food contact surfaces, valves, paddles and storage tanks are dismountable for inspection and cleaning.

"Certain machines of this type require a water connection under pressure to blend water and mix concentrate within the machine. The base mix or concentrate is prepared and filled in containers at carbonated beverage plants for delivery to machine locations. Older model machines produce a neutral base ice slurry to which is added the desired flavor from individual dispensers adjacent to the machine.

"It would be appreciated if you would render an opinion on the following:

"Would the installation and use of a semifrozen flavored drink dispensing machine constitute a food handling establishment, located in establishments not otherwise subject to food regulations, as defined in the Bulletin of the Alabama State Board of Health Regulations Governing the Manufacture, Preparation, Display and Service of Foods, Confections and Beverages and require a permit for its operation?"

Section 1, Paragraph A, found on page 5 of the Bulletin of Alabama State Board of Health which contains the Regulations of the Alabama State Board of Health and the State Committee of Public Health governing the manufacture, preparation, display and service of foods, confections and beverages, in pertinent part, states:

> "The term 'Food Handling Establishment' shall mean any . . . vessel, or any part thereof, in which foods intended for sale for human consumption are . . . stored, processed, . . . served or handled in their unpackaged state in any manner, . . . provided that this definition may be construed to include . . . premises, carts, vehicles, machines or vessels in which wrapped, packaged, or bottled foods only are handled."

Therefore, provided that these drink dispensing machines are dispensing a food, it appears that they are included within the definition of a "Food Handling Establishment," because from your letter, it appears that the ingredients obviously intended for human consumption, are stored in their unpackaged state. The regulation speaks of a vessel, and a vessel is defined in **Webster's Seventh New Collegiate Dictionary** as a "utensil . . . for holding something." But, actually, the regulation goes further and expressly provides that it be construed to include "premises, carts, vehicles, machines or vessels in which wrapped, packaged, or bottled foods only are handled."

I am therefore of the opinion that the dispensing machines you describe in your letter are vessels and machines, and, being dis-

mountable for inspection, are included within the definition of a "Food Handling Establishment" as set out in the regulation above, and, again, provided it can be shown that the product they dispense is a "food."

You describe the drink as a flavored ice slurry or "a semifrozen flavored drink." Is this a food?

The State Board of Health defines a "food" as follows:

> "The term 'Food' or 'Foods' shall mean and include any food, confection or beverage, or any component used in the preparation or manufacture thereof, intended for human consumption."

This definition arbitrarily defines a beverage (without regard to its nutritional qualities) as a "food" if it is intended for human consumption, and according to Webster's, a beverage is a "liquid for drinking." It would seem incredible to suppose that a drink would not be a beverage, for even a slurry, defined as "a watery mixture of insoluble matter" (Webster's), if intended for human consumption, would, under the State Board of Health Regulation, be defined as a "food." Therefore, it appears to be beyond question that the product dispensed by these machines is a "food." It is my opinion, therefore, that these dispensing machines are "Food Handling Establishments" within the meaning of the existing definitions of the regulations.

These regulations of the State Board of Health and the State Committee of Public Health are promulgated under authority of Title 22, Section 85, Code of Alabama 1940 (Recompiled 1958), which, in pertinent part, is as follows:

> "The state committee of public health shall, as conditions demand, adopt and promulgate regulations for the . . . operation of all establishments, and their immediate surroundings, in which foods or beverages intended for sale for human consumption are made, prepared, processed, displayed for sale in an unpackaged state, or served; . . . ."

Furthermore, it is noted that in counties where these regulations are in force, Section 2 thereof provides that:

> "It shall be unlawful for any person to operate a food handling establishment in said county unless such person possesses a valid permit issued by the Health Officer for the operation of said establishment."

Thus, I am of the opinion that the dispensing machines you describe would require a separate permit for their operation, if they be located in premises not otherwise subject to the State Committee of Public Health food regulations.

Yours very truly,

MacDONALD GALLION
Attorney General

May 9, 1967

Honorable Robert M. Field
City Attorney
City Hall
P. O. Box 670
Anniston, Alabama 36201

Intoxicating Liquors — Clubs.

Title 10, Section 142, Code of Alabama 1940, has no application to clubs located in those parts of the State which are in wet counties.

Opinion by Assistant Attorney General McQueen.

Dear Sir:

Your request for an official opinion bearing date of April 27, 1967, is as follows:

"Reference is made to Article 93 A — Appendix, Section Number 258, Subsection 1 through 20 as well as appropriate sections of Title 29. The first act referred to applies to Calhoun County only.

"Various problems are regarding the enforcements of our local liquor laws and in particular regarding the use of beverages by private clubs:

"1. Does the ABC Act supersede Title 10, Section 142?

"2. If your answer to the above questions is yes, then is it lawful for a bona fide private club to allow the consumption of alcoholic beverages on its premises when said beverages are purchased by the club member from a state ABC store and brought to said premises by the member (i.e. when the club does not participate in the sale of said beverages)."

Title 10, Section 142, Code of Alabama 1940, provides that a copy of the constitution or bylaws of the club shall be exhibited to the probate judge and containing an article that the club or society shall have no right to engage in, and will not engage in the business of selling, keeping for sale, or disposing of any liquors or beverages that are prohibited by the laws of Alabama to be manufactured, sold, or otherwise disposed of in the State, and that the said club or society shall not permit its members to keep or store any such prohibited liquors or beverages about the premises of the club or society for the use by, or the consumption by its members or others.

It is to be specifically noted that this Code section is dealing with liquors or beverages prohibited by the laws of Alabama, to be manufactured, sold or otherwise disposed of. Calhoun County being a wet county, liquors or beverages may be legally sold or otherwise disposed of in the county, and any liquors or beverages legally purchased are not prohibited liquors or beverages in said county. It, therefore, nec-

essarily follows that Section 142, supra, has no application to Calhoun County, except as to prohibited liquors or beverages. It is not superseded by the ABC Act, but since the sale of liquors in your county is allowed by law, the Code section has no application thereto, except noted above.

In answer to your second question, since Section 142 of Title 10, Code of Alabama 1940, has no application to Calhoun County, you are advised that I know of no law, and especially Article 93 A — Appendix, Section 258, Subsection 1 through 20 as well as appropriate sections of Title 29, which would prohibit the members of a bona fide private club consuming or possessing alcoholic liquors or beverages on the club premises, provided, of course, that said liquors or beverages are legally purchased through the appropriate channel, namely, the ABC store in your county or any other county in the State.

Yours very truly,
MacDONALD GALLION
Attorney General

May 15, 1967

Honorable James W. Todd
Chairman, Limestone County Board
of Education
P. O. Box 390
Athens, Alabama

Schools — County Boards of Education — County Superintendents of Education

The primary responsibility for determining how county school funds shall be spent rests with the County Board of Education, and a County Superintendent of Education cannot obligate school funds without the approval of the majority of the members of the said Board.

Opinion by Assistant Attorney General Hall.

Dear Mr. Todd:

Your request for an official opinion bearing date of May 3, 1967, is as follows:

> "Will you please advise us as to the duties and authorities the Board of Education members have, also the duties and authorities that the County Superintendent has.
>
> "Can the Superintendent go ahead with a money spending project without the approval of the majority of the Board members."

The duties and authority of County Boards of Education generally are set forth in Title 52, Sections 62-101, Sections 200-207, and Section 236, Code of Alabama 1940 (Recompiled 1958).

The duties and authority of County Superintendents of Education generally are set forth in Title 52, Sections 102-137, Code of Alabama 1940 (Recompiled 1958).

Title 52, Section 62, provides that the general administration and supervision of the public schools of the educational interests of each county, with the exception of cities having a City Board of Education, shall be vested in the County Board of Education.

Title 52, Section 70, provides that the County Board of Education shall appoint a custodian of the public school funds of the county, which custodian may be the county treasurer, the secretary to the County Superintendent of Education, or some other qualified person, and further provides that the custodian of school funds shall pay out such monies only on written orders of the County Superintendent of Education, approved by the Chairman of the County Board of Education.

Title 52, Section 202, provides that all local school monies raised for the support of public schools by taxation or otherwise shall be apportioned and expended in the district or districts or counties in which the same were raised, under such rules and regulations as the County or City Board of Education, as the case may be, may prescribe, but this section shall not be construed to repeal any provision for the apportionment and disbursement of monies mentioned in this title or provided for in special or local laws, and all funds contributed by persons or otherwise to any school or school district shall be applied as indicated in the grant from such contributors.

Title 52, Section 102, provides that there shall be a County Superintendent of Education in each county of this State who shall act as the chief executive officer of the County Board of Education, and who shall be the secretary of the County Board of Education.

Title 52, Section 132, provides that the County Superintendent of Education shall, at such times and in such manner as directed by the County Board of Education and approved by the State Superintendent of Education, prepare his pay roll or pay rolls for the payment of teachers, employees, bills, and other items authorized by the County Board of Education, and Title 52, Section 133, provides that the County Superintendent of Education, unless otherwise directed under the authority of the preceding section, at the end of each scholastic month following the date fixed for the opening of the schools in the county shall prepare a pay roll covering all teachers, employees, bills and items authorized by the County Board of Education payable by the calendar month.

Title 52, Section 134, provides that no money shall be paid on any pay roll unless the County Superintendent of Education certifies thereto in writing that the same in every respect is correct and that the amounts

contained thereon are due the parties as shown thereby and that the same should be paid, and unless the Chairman of the County Board of Education endorses on said pay roll an order that the same be paid.

In the case of **Panther Oil and Grease Manufacturing Company v. Blount County Board of Education,** 41 Ala. App. 434, 134 So. 2d 220, decided by the Court of Appeals of Alabama on October 31, 1961, it was held that a County Board of Education is not liable for materials furnished on orders of the County Superintendent where the County Board of Education had not approved the expenditure of funds, therefor, and the Superintendent ordered such materials without the knowledge, consent, or approval of the Board, and there was no ratification by the Board. The Court adopted the opinion of the Trial Judge who said, among other things, that "the Board of Education is charged with the responsibility under the law of determining how the school funds available can best be spent."

Therefore, it is my opinion that the primary responsibility for determining how school funds shall be spent rests with the County Board of Education, and that the County Superintendent of Education cannot obligate school funds without the approval of the majority of the members of the School Board.—Biennial Report of Attorney General 1930-32, Page 219; Biennial Report of Attorney General, 1926-28, Page 200.

Very truly yours,
MacDONALD GALLION
Attorney General

May 17, 1967

Honorable John L. Moore
Judge of Probate
Probate Court of Mobile County
Post Office Box 7
Mobile, Alabama 36601

Judges of Probate — Uniform Commercial Code — Costs and Fees — Filing Tax — Mobile County.

Local filing fees of Mobile County, Alabama, as required under Act No. 31, Acts of Alabama, Special Session, 1956, goes to Mobile County and not to the filing officer for the performance of his duty and hence not in conflict or inconsistent with Section 9-408, Uniform Commercial Code.

Opinion by Assistant Attorney General Hart.

Dear Sir:

I have your letter of April 11, 1967 which reads as follows:

"Pursuant to Title 55, Section 240 of the Code of Alabama 1940, Recompiled 1958, request is hereby made for a written opinion

on the following question connected with the duties of the Judge of Probate of Mobile County, Alabama, namely:

"During the Regular Session in 1965, the Legislature of the State of Alabama enacted an act known as the Uniform Commercial Code. This act is under Title 7A of the Code of Alabama. In 1956, by Act Number 31, the Legislature provided that a special recording fee of $1.00 shall be paid to Mobile County and collected by its Judge of Probate, with respect to each real property instrument and each personal property instrument that may be filed for recording in the office of said Judge of Probate, and, on and after such date, no such instrument shall be received for recording in the office of said Judge of Probate unless said special recording fee of $1.00 is paid thereon.

"Article Ten of the Uniform Commercial Code seems to repeal any existing laws to the contrary with certain specific exceptions. It is noted that local Act Number 31, Special Session 1956, Mobile County is not in the list of Acts that were excepted.

However, it is thought that the Index Tax, insofar as real property instruments are concerned, is not in question.

"Please advise, in your opinion, whether or not this office is to collect on each personal property instrument or to use the language of the Uniform Commercial Code on each financing statement filed, the $1.00 Index Tax provided for in said local act, or was this local act repealed by the Uniform Commercial Code."

In the above letter, you wish to know whether or not the Uniform Commercial Code repealed Act No. 31, Acts of Alabama, Special Sesson, 1956, which is set out here in pertinent part:

"On and after the date this act becomes applicable to the county, a special recording fee of $1.00 **shall be paid to the county,** and collected by its Judge of Probate, **with respect to** each real property instrument and **each personal property instrument that may be filed** for record in the office of said Judge of Probate, and, on and after such date, no such instrument shall be received for record in the office of said Judge of Probate unless the said special recording fee of $1.00 is paid thereon. Said special record fee shall be in addition to all other fees, taxes and other charges required by law to be paid upon the filing for record of any real property instrument or personal property instrument." (Emphasis ours.)

Section 10-103, Uniform Commercial Code, states as follows:

"Except as provided in the following section, all acts and parts of acts inconsistent with this title are hereby repealed."

Section 10-104, Uniform Commercial Code, lists the laws not repealed. However, this section does not list Act No. 31, supra.

Section 9-408, Uniform Commercial Code, states:

> "The fees provided in this Part 4 of article 9 **for the performance of certain duties by filing officers** shall be in lieu of all other fees otherwise provided by law for the performance of such duties." (Emphasis ours.)

In my opinion, regardless of whatever name this fee is "called," it is immaterial. Act No. 31, supra, says that upon filing of certain instruments, the fee is due to the county and not to the Judge of Probate for the performance of his duties as filing officer. The fee of $1.00, which is in question, is a privilege fee or a filing fee levied by Mobile County and all proceeds therefrom go to said county.

In my opinion, Act No. 31, Acts of Alabama, Special Session, 1956, is not in conflict or inconsistent with the provisions of the Uniform Commercial Code, inasmuch as this is a tax or fee, in addition to all other taxes or fees, paid to Mobile County and not paid to the Judge of Probate for the performance of his duty.

Yours very truly,
MacDONALD GALLION
Attorney General

May 22, 1967

Mr. T. O. Collins
License Inspector
Mobile County
Mobile, Alabama

Licenses — Additional Payments — Opinions Overruled, Etc.

1. Where a licensee moves his place of business to a new location in the same county, during the same license year, which new location requires a higher license because of a greater population, he is entitled to a credit as to the amount of license taxes he has already paid, when he procures the higher license.

2. Opinion dated April 10, 1967, and opinion reported in Quarterly Report of Attorney General, Volume 15, page 83, both relating to the same subject matter, are overruled. Opinion reported in Quarterly Report of Attorney General, Volume 64, page 103, is extended.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion of this office bearing date of May 3, 1967, reads as follows:

"Reference is made to the informal opinion of your office addressed to me as License Inspector for Mobile County and dated April 10, 1967, and which relates to a license question which has arisen under Title 51, Sections 830 and 848, as amended, Code 1940.

"The particular case to which I refer, although the question is quite common, involves the automobile dealer's license under Title 51, Section 462, Code 1940, and which is measured on the basis of population. The licensee originally purchased the license for location three miles beyond the corporate limits of the City of Mobile. He has now moved during the same license year, to a location within the City of Mobile which calls for a higher license under the same statute. He desires to procure a license for this location by taking credit for the license originally purchased, and by paying the additional amount called for under the graduated scale contained in Section 462 and applicable to the population of the City of Mobile, plus any additional fees which might be due.

"The informal opinion of your office above referred to is in conflict with what I have been informed has been the administrative interpretation of the statutes involved by the State Department of Revenue for a number of years, and also in principle with an opinion of your office dated September 29, 1951, and reported in Quarterly Report of the Attorney General, Volume 64, page 103. Said informal opinion is said to be predicated on an opinion dated May 4, 1939, and reported in Quarterly Report of Attorney General, Volume 15, page 83, which was issued prior to one of the statutes involved, namely, Section 848 of Title 51, being amended in 1943.

"Due to these apparent conflicts, and the situation described by me which will require immediate attention, I request that you please reconsider this matter, and at your earliest convenience give me your official opinion clarifying these apparent conflicts. In this respect, I request that you please answer the following question:

"1. Where a licensee moves his business during the license year to a new location in the same county, which requires a higher license (based on population or otherwise), can he procure the higher license for the business by being given a credit for the amount which he paid on the original license, or is he required to pay the full amount for the new license?

"Your cooperation in this respect will certainly be greatly appreciated."

In my opinion the licensee to which you refer is entitled to a credit for the amount paid for the first license on the higher license, when moving his business to another location in the same county

which requires a higher license under the graduated scale contained in the license statute.

The opinion of this office addressed to you and dated April 10, 1967, and which holds to the contrary, is based on an opinion of this office dated May 4, 1939, and reported in Quarterly Report of Attorney General, Volume 15, page 83. The opinion of April 10, 1967, was also based on the proposition that there was "no mistake of fact or law in such an instance" to bring into play the provisions of Title 51, Section 848(c), Code of Alabama 1940, Recompiled 1958.

These two opinions appear to be in conflict, at least in principle, with an opinion of this office dated September 29, 1951, and reported in Quarterly Report of Attorney General, Volume 64, at page 103. That opinion overruled the opinion of this office contained in Quarterly Report of Attorney General, Volume 19, page 211.

In that opinion this office had under consideration the veneer mill license under Title 51, Section 614, Code of Alabama 1940, which levies a license on a graduated scale based on the number of employees of the mill. The licensee paid the proper license at the beginning of the license year, but increased its employees later in the year and was cited by the license inspector for a higher license. The question was whether a credit could be given for the amount paid on the first license in purchasing the new one.

In answering this question in the affirmative, this office in Quarterly Report of Attorney General, Volume 64, at page 104, held, as follows:

> "In considering the above statute, it is my opinion that where the change in number of employees during any license year places a licensee in a higher license bracket, **credit for the amount paid for the original license can and should be allowed on the amount paid for the new license."** (Emphasis supplied.)

In this case, of course, we have under consideration the automobile dealer's license under Title 51, Section 462, supra. This license is levied on "Each person dealing in, selling or purchasing for resale, automobiles, trucks, or other self-propelled vehicles . . . . " The license is measured as follows:

> ". . . In cities and towns of fifty thousand or more inhabitants, one hundred and forty dollars; in cities and towns of over twenty-five thousand and not exceeding fifty thousand inhabitants, one-hundred dollars; in cities and towns of over ten thousand, and not exceeding twenty-five thousand inhabitants, eighty dollars; in cities and towns of over five thousand not exceeding ten thousand inhabitants, sixty-five dollars; in cities and towns of over two thousand five hundred, and not more than five thousand inhabitants, fifty dollars; in cities and towns of two thousand five hundred and less inhabitants, thirty dol-

lars. In all other places, whether incorporated or not, thirty dollars; . . . . "

In this case the licensee purchased the license at the beginning of the year based on the population of a location outside the City of Mobile, and later during the same license year moved his business to another location in the same county, but in the City of Mobile, which new location calls for a higher license because of the larger population.

The only material difference in the two situations is the fact that in this case the licensee moved his place of business. However, the new location was in the same county. In both instances the higher license under the graduated scales contained in the statutes became due later in the license year, and but for the move to the new location this case would be practically on all fours with the situation in the opinion reported in Quarterly Report of Attorney General, Volume 64, page 103.

Title 51, Section 830, Code of Alabama 1940, relates to a change of a place of business during the same license year and is as follows:

"When a person has obtained a license to engage in or carry on any business, employment or profession at any definite place in the county or city in Alabama, and desires to remove to any other place within same county or city where license was granted and wishes his license altered accordingly, the probate judge who originally issued such license shall make such alteration, which alteration shall be shown on the license records of the probate judge's office. Provided, that no license shall be altered to change a place of business to a location requiring a higher license than originally paid."

The proviso has been construed in the opinion dated April 10, 1967, and the opinion reported in Volume 15, page 83, to prohibit the giving of a credit where a higher license is called for because of moving to a new location in the same county. In other words, where the license in the new locality is less or the same as in the old one, then it appears to be agreed that it can be changed (altered) by the probate judge and made applicable to the new location in the same county without any additional charge. However, said two opinions seem to hold that if the license is a dollar or even fifty cents more based on the population of the new locality, or for some other reason, then the first license issued for the same license year is no longer valid, and a new license for the full amount based on the higher classification, and without any credit, is due.

This does not appear to be fair or equitable or to reflect the true intent of the Legislature. Quarterly Report of Attorney General, Volume 64, pages 103, 104. The proviso does not expressly or even by implication appear to prohibit the giving of a credit under the circumstances. It only prevents the probate judge from altering the same license (in effect transferring it) where the change in

location calls for a higher license. That is, the Legislature is seeking only to prevent the transfer of the same license where a higher license is called for. It does not seek to prohibit, where a new license for the proper amount is procured, the giving of a credit for the amount paid on the first license. The proviso does not mention a credit at all. It only prohibits the first license from being altered or in effect transferred or used again where the move to the new location puts the licensee in a higher bracket.

The foregoing being considered, it would certainly be just as reasonable to assume that a credit can be given in the case of the license under Section 462 as to a change in location calling for a higher license than it can be in the case of the license under Section 614 where the license is increased during the license year because of an increase in the number of employees. If the credit can be lawfully allowed in the case of the one, it can be also lawfully allowed in the case of the other.

Since the opinion reported in Quarterly Report of Attorney General, Volume 15, page 83, on which the opinion to you dated April 10, 1967, is predicated, the Legislature in 1943 amended Section 848 of Title 51, Code of Alabama 1940, by adding to said Section as Subsection (c), a provision relating to **additional licenses.**

Subsection (c) of Section 848, supra, reads as follows:

> "In the case of the issuance of a license for less than the amount due therefor, upon the payment of the additional amount due for such license an additional license may be issued, in such manner as to allow credit for the amount previously paid by the licensee, and there shall be endorsed on the face of such additional license the words 'Additional to License No. _____.' "

Some confusion has been occasioned by Subsection (c) being added to Section 848, in that Subsections (a) and (b) of Section 848 relate to license taxes paid "by a mistake of law or fact," and refunding such taxes where so paid. Subsection (c) relates only to an "additional license," and has nothing to do with taxes paid "by a mistake of law or fact," and in refunding such taxes. Subsection (c) then treats with an entirely different subject matter than does Subsections (a) and (b) of Section 848, and the one has nothing to do with the other.

While the provisions of Subsection (c) admittedly leave much to be desired, and are not as clear as they should be, the point is that this subsection seems definitely a manifestation of the legislative intent to allow a credit under the circumstances. Moreover, Subsection (c) draws no distinction between licensees who move their place of business during the license year and those who do not, where a higher license is called for during the same year and in the same county because of increase in population, increase in the number of employees, or for some other reason.

I am also reliably informed that this has been the administrative interpretation of these statutes by the State Department of Revenue for a number of years, and practically since the enactment of Subsection (c) as an amendment to Section 848, supra, in 1943. The Department has allowed the credit under the circumstances. Such long established administrative interpretation of these statutes by the Department is said to be entitled to considerable weight in arriving at the legislative intent. **Haden v. McCarty,** 275 Ala. 76, 152 So. 2d 141; **State v. Birmingham Rail & Locomotive Company,** 259 Ala. 443, 66 So. 2d 884, among a number of others.

In sum, it clearly appears that the licensee is entitled to the credit under the facts as have been related by you.

The opinion of this office to you of April 10, 1967, and opinion reported in Quarterly Report of Attorney General, Volume 15, page 83, which are to the contrary are overruled. The opinion reported in Quarterly Report of Attorney General, Volume 64, page 103, is extended to include the allowance of a credit under the facts as here stated.

Yours very truly,
MacDONALD GALLION
Attorney General

May 22, 1967

Honorable Cleon Yates
Commissioner of Licenses
Courthouse — P.O. Box 668
Decatur, Alabama

Motor Vehicle Licenses — Antique Vehicles.

1. The special licensing of "antique vehicles" under Act No. 116, Second Special Session of the Legislature of 1965, approved September 30, 1965, is not for the purpose of using such vehicles for transportation or generally on the highways, but only for limited or special use on the highways such as moving or repairing same or taking such vehicles to some kind of meeting or exhibition for historical, show or display purposes.

Opinion by Assistant Attorney General Burton.

Dear Sir:

Your request for an official opinion of this office bearing date of April 20, 1967, reads as follows:

"Please give us an opinion at the earliest possible time on the following:

"An Act of Legislature, Act number 116, 'Antique Vehicle License', September 30, 1965.

"Is this antique license plate intended for transportation, or show purpose only?"

Pertinent Sections of Act No. 116, Acts of Alabama 1965, Second Special Session, Volume I, page 157, are as follows:

"Section 1. The owner of any motor vehicle **which is more than twenty-five years old and which is owned and operated primarily as a collector's item,** upon application to the Commissioner of Revenue of the State of Alabama on special application forms prescribed by the Commissioner and the payment of a registration fee of ten dollars ($10), may register such vehicle as an 'antique vehicle' and procure therefor permanent license plates or tags to be issued for and displayed on such vehicle in lieu of regular motor vehicle license plates or tags.

"Section 2. 'Antique vehicle' license plates or tags shall be of such size and design as the Commissioner of Revenue may prescribe, shall bear no date, shall have inscribed thereon the words 'antique vehicle' and run in a numerical series commencing with 'antique vehicle No. 1,' shall be of a color different from regular motor vehicle license plates or tags and shall be valid without renewal.

"Section 5. The State Department of Revenue shall make such rules and regulations as necessary to provide for the application for and issuance of such special tags." (Emphasis supplied)

In providing in Section 1 of Act 116, supra, that in order to qualify for the special license as an "antique vehicle" such vehicle must be "more than twenty-five years old and **owned and operated primarily as a collector's item,"** it appears that the legislative intent was that in being so licensed that such vehicles could not be used generally as a mode of transportation or generally on the public highways. That is, that such vehicles as so licensed be considered mainly as a collector's item and for display purposes rather than as a means of transportation.

In using, however, the phrase **"primarily** as a collector's item" in the definition of an antique vehicle in said Act, it is reasonable to assume that the legislature did not intend to prohibit an occasional use on the highways of the vehicle as so licensed, for the purpose of moving it to another place, or for the purpose of repairing or exhibiting the vehicle.

The foregoing is in keeping with a ruling made by the State Department of Revenue to Honorable Bradley Brown, Director of Revenue, Jefferson County, on December 16, 1965, very shortly after the enactment of Act No. 116. It is also my understanding that such

ruling has been followed by the License Division of the State Department of Revenue in administering said Act since the time the ruling was released in 1965.

I am, therefore, of the opinion that the special antique vehicle tag as is provided for in Act No. 116, supra, would not permit the general use of such vehicles on the highways, and would limit the use thereof on the highways to special occasions, i.e., for the purpose of moving or repairing the vehicle or taking it to some kind of exhibition or meeting for historical, display or show purposes.

Yours very truly,
MacDONALD GALLION
Attorney General

May 26, 1967

Mr. J. E. Newton
Franklin County Coroner
207 West Lawrence Street
Russellville, Alabama

Coroners — Bodies — Physicians — Inquests.

1. It is the duty of the County Health Officer to investigate and sign the death certificate on unattended deaths, if no Health Officer, the coroner shall do so.

2. Any party has the right, when death occurs by natural causes, to order the removal of the dead body to a mortuary.

Opinion by Assistant Attorney General Tyson.

Dear Sir:

Your letter to this office dated April 25, 1967, asks our office's opinion on the following:

> "1. When death occurs to a person unattended, or not under the care of a doctor (not including dead on arrival) does a doctor have the authority to sign the death certificates. This especially includes un-investigated suicides, accidents and homicides."

Title 22, Section 26, Code of Alabama, as Recompiled 1958, provides in substance that on all unattended deaths that the local registrar shall notify the County Health Officer who then shall investigate and sign the death certificate. When there is no County Health Officer, the registrar is authorized to complete the certificate from the facts given by relatives or persons having adequate knowledge of the

facts unless there is reason to believe that some unlawful act or negligence took place, and, in that event, the registrar must notify the coroner who will make an investigation and file the death certificate. In brief then, a physician is only authorized to sign the death certificate when he had been in attendance and must do so in that event personally. Title 22, Section 25, Code of Alabama, as Recompiled 1958, and Biennial Reports of Attorney General, 1928-1930, page 263.

> "2. When any person knowingly and willfully removes a dead human body from the place of death, when death comes by either suicide, accident, homicide or unattended by a doctor, what action may be brought against the person or persons removing the body."

When death occurs without medical attendance and is occasioned by an accident or natural causes, then the coroner or other legal official, or any friend, relative, or neighbor of a dead person has the authority to order the removal of the body to a mortuary, when it does not appear that death occurred by any unlawful means. Informal Opinion of Attorney General, January 11, 1965.

When the death occurs without medical attendance, the procedure to be followed is outlined in Title 22, Section 26, Code of Alabama, as Recompiled 1958.

A coroner has the authority to order an autopsy during an inquest when the physician who has been called in by the coroner cannot determine the cause of death from an external postmortem examination. Volume 92, Quarterly Reports of Attorney General, page 13.

With reference to the penal provisions for the unlawful removal of dead bodies, the provisions for unlawfully removing a body from this State to another State are found in Title 22, Section 87(1), Code of Alabama, as Recompiled 1958, as amended 1959.

With reference to the removal of dead bodies within the State, I suggest that you contact the State Board of Health for the regulations adopted pursuant to the provisions of Title 22, Section 87, Code of Alabama, as Recompiled 1958, as amended 1959.

I call your attention to the fact that none of the foregoing sections are intended to prohibit the transportation of dead bodies for the advancement of medical science as provided by the provisions of Title 22, Sections 184(1)—184(3), Code of Alabama, as Recompiled 1958.

I trust this answers your inquiry.

Very truly yours,
MacDONALD GALLION
Attorney General

May 31, 1967

Dr. J. S. Tarwater
Director
State Dept. of Mental Health
Tuscaloosa, Alabama 35401

State Board of Mental Health — State Board of Adjustment.

1. Claims against State Board of Mental Health for torts of its employees must be processed through the State Board of Adjustment.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an official opinion of this office bearing date of May 3, 1967 is as follows:

> "Occasionally small claims are placed against the Alabama State Hospitals and the Partlow State School and Hospital due to the following: One of the state vehicles may cause slight damage to automobiles of people on the grounds or in surrounding towns, in which case the claimant usually is sent to three garages to determine the cost to repair the damage. Then, again, we have employees who suffer slight injury on the job and the state insurance does not cover full cost of medical and hospital bill. As a rule these claims are not in excess of $100.
>
> "At the last meeting of the State Board of Mental Health on April 18, 1967, at my request, a motion was introduced and passed to the effect that such claims not in excess of $150 be paid by the Hospitals in order to avoid long delay awaiting decision by the State Board of Adjustment. We feel that this action by the Hospitals would create better personnel and public relationships. Then, too, as you know, in many of these small claims going to the State Board of Adjustment the claimant might employ an attorney, and it is felt that the final expense to the Hospitals would be greater. We still expect claims in excess of $150 to go to the State Board of Adjustment.
>
> "While this motion was approved by the State Mental Health Board, I was instructed to get your opinion as to whether or not we might operate in this manner. Since two small claims—one in the amount of $30 and the other less than $100—are pending, your early opinion will be appreciated."

It is my opinion that your inquiry should be answered in the negative.

The State Board of Mental Health is a State agency and as such cannot be sued in the State courts of Alabama for the torts of its employees. Section 14, Constitution of Alabama 1901.

However, the Legislature created an agency—State Board of Adjustment—for the purpose of settling claims against agencies of the State of Alabama and this has been done in the past with the predecessor agency of the State Board of Mental Health.

Furthermore, I find nothing in the Legislative Act creating the Board of Mental Health that would alter or change the method of settling claims against State agencies as is spelled out in Title 55, Sections 333-344, Code of Alabama 1940, as Recompiled 1958, i.e., State Board of Adjustment.

Consequently, I must conclude that claims against the State Board of Mental Health must be disposed of by the State Board of Adjustment.

Very truly yours,
MacDONALD GALLION
Attorney General

June 1, 1967

Honorable Nelson Allen
Judge of Probate
Walker County Courthouse
Jasper, Alabama

Words and Phrases — Judges of Probate — Secretary of State — Uniform Commercial Code.

1. Financing statements or security agreements filed with the Judge of Probate or Secretary of State cannot be withdrawn.

2. Such statements or agreements may be invalidated by filing a termination statement.

3. When a statement or agreement is properly terminated, where mortgage and/or deed tax has been paid on same, and another statement or agreement is subsequently filed on which deed and/or mortgage tax would otherwise be due, such tax should be collected by the filing officer.

Opinion by Assistant Attorney General Hart.

Dear Judge Allen:

I have your letter of April 17, 1967, which reads as follows:

"We enclose copy of a conditional sales contract from Richardson Lumber Company to Sawmill Equipment Company, carry-

ing transfer from Sawmill Equipment Company to Credit Alliance Corporation, accepted by this office for record April 14, 1967, from Sawmill Equipment Company. Mortgage and deed tax were charged on the instrument.

"We today received a telephone call from Credit Alliance Company stating that the instrument was filed erroneously and requesting that it be allowed to withdraw same and file in lieu thereof a Financing Statement.

"Will you please advise us the following:

"1. Is there any method under the UCC law (except by termination) that an instrument can be withdrawn?

"2. In the event of the termination of an instrument on which mortgage and deed tax have been paid and the filing of an instrument on which mortgage tax only is due, said instrument being filed in lieu of the terminated one, should mortgage tax be charged on the new instrument?

"3. In the event a withdrawal can be made, should same be done by the secured party or the transferee?

"4. In the above instance, as in all others, it has been the policy of this office to retain the original copy of the instrument filed. This company, as some others, feel that the original copy should be returned to them and we should retain carbon copies only. Please advise us in this regard."

In the above letter, you list four questions which are answered and discussed below.

In answer to your question numbered 1, may I refer you to Section 9-403(1), Uniform Commercial Code, which is entitled "What constitutes filing; . . ." and which, as pertinent here, states:

"(1) Presentation for filing of a financing statement and tender of the filing fee or acceptance of the statement by the filing officer constitutes filing under this article."

Headnote 1 under "Official Comment" of Section 9-403, Uniform Commercial Code, further points out:

"1. Prior law was not always clear whether a mortgage filed for record gave constructive notice from the time of presentation to the filing officer or only from the time of indexing. Subsection (1) adopts the former position."

Under the above definition as to "What constitutes filing," notice filing is perfected upon **presentation of instrument, payment of filing fee,** and **acceptance by filing officer.** When the instrument is filed under the above definition, it cannot be withdrawn.

Under the Uniform Commercial Code, the proper method of invalidating the instrument is by filing a termination statement.

In answer to your question numbered 2, relative to the termination of an instrument on which mortgage and/or deed tax has been paid and another statement or agreement subsequently filed on which deed and/or mortgage tax would otherwise be due, it is my opinion that the tax **should be** collected on the new agreement or financing statement.

My conclusion is based upon the decision of the Supreme Court of Alabama in the case of **Hawkins v. Pure Oil Co.,** 232 Ala. 660, 169 So. 307. The Court said:

> ". . . The plain purpose of its recordation, therefore, is not for perfection of the title . . ., but the perfection of the record of transaction. But for that privilege the statute exacts a tax, and the exception was not incorporated in the statute for the purpose of enabling one who has the legal title to thus gain the advantage of its recordation without its payment."

Your question numbered 3 requires no answer.

As to your question numbered 4, it is my opinion that any policy of your office would be correct so long as either the original agreement, a carbon copy thereof, or an authenticated xerox copy thereof is retained by you for filing purposes. The system presently employed by you, of obtaining the original agreement and returning the carbon copies thereof, is, therefore, concurred in by this office. In this regard, please note the opinion of this office rendered to Mrs. Mabel Amos, Secretary of State, and dated February 27, 1967, a copy of which is attached hereto.

Yours very truly,
MacDONALD GALLION
Attorney General

June 1, 1967

Hon. C. P. (Red) Walker
Sheriff, Shelby County
Columbiana, Alabama

Costs & Fees — Funds — Sheriffs — Permits — Firearms.

1. Validity of an Act of the Legislature creating a special fund into which is paid fees obtained from the sale of pistol permits discussed.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an official opinion of this office bearing date of May 9, 1967 is as follows:

"Please find enclosed a copy of Act No. 105, House Bill 172, passed in the 1967 Special Session of the Legislature and approved by the Governor on April 20, 1967.

"The question has arisen as to the legality of this fund and whether or not it would be illegal or unconstitutional.

"In reference to the Boutwell Amendment as set out in Sec. 3, it is my feeling that this section would certainly remove it from being unconstitutional, it is not a fee that is earned by the Sheriff in reference to fees or allowances, nor one which can be used for personal gain or enrichment to the Sheriff. It is to be used as set out in Sec. 3 for law enforcement purposes.

"I think you will find a similar fund in Jefferson County, Baldwin County, and Montgomery County and possibly others.

"Your early attention to this matter will enable my department to use this fund as the Legislature intended. The Sheriffs' Department and myself greatly appreciate your help."

This office is unable to rule a legislative enactment constitutional or unconstitutional; only the courts can do that; however we can express our opinion on the legality of a statute for whatever it may be worth to an interested officeholder.

As to Act No. 105, Acts of Alabama 1967, Special Session, approved April 20, 1967, which appears to be a local Act affecting only Shelby County, Alabama, I am of the opinion that it is a valid enactment of the Legislature of Alabama.

I cannot find where it contravenes any pertinent provision of the Constitution of Alabama 1901, and as amended, particularly those provisions having to do with costs and fees.

The five dollar fee in question comes about from the sale of pistol permits by the Sheriff, and, as such, is not a part of the costs of a criminal or civil case or proceeding from which the Sheriff may be entitled to receive a portion thereof.

This being so, there is no violation of the prohibition contained in Sections 104 and 105 of the Alabama Constitution. See **In re Opinion of the Justices,** 266 Ala. 363, 96 So. 2d 634; **Standard Oil Co. vs. Limestone County,** 220 Ala. 231, 124 So. 523.

I would also point out that the uses to which this fund may be put are not being considered by this office at this time. Each expenditure from said fund by the Sheriff would have to stand or fall, legally speaking, on its own peculiar facts. Any request for an opinion on this part of the Act should be accompanied by a statement as to the

use an expenditure from the fund is to be put. This would enable this office to properly evaluate the legality of the expenditure.

I trust this answers your question.

Very truly yours,
MacDONALD GALLION
Attorney General

June 7, 1967

Honorable Willie J. McKnight
Tax Assessor
Dale County
Ozark, Alabama

Taxation — Ad Valorem Tax — Homestead Exemption — Soldiers' and Sailors' Civil Relief Act.

Servicemen whose domicile is in a state other than Alabama and who are stationed in Alabama in compliance with military or naval orders are not liable for ad valorem tax on their personal property even though they are entitled to and claim homestead exemptions.

Opinion by Assistant Attorney General Livingston.

Dear Sir:

Your request for an official opinion dated May 17, 1967, is as follows:

> "There are many John Does who are stationed at Ft. Rucker, and who are non-residents of Alabama. These many servicemen have purchased homes in Dale County and are claiming and getting homestead exemption.
>
> "Do the above mentioned non-resident servicemen owe ad valorem tax on their personal property if they are getting homestead exemption?"

It is assumed for the purpose of this opinion that the servicemen referred to are personnel in the military service stationed in Alabama in compliance with military or naval orders whose domicile is in a state other than Alabama but who own a home in Alabama in which they live with their families and claim homestead exemptions.

The answer to your question is governed by the provisions of Section 514 of the Soldiers' and Sailors' Civil Relief Act of 1940, as amended, (Title 50, Section 574, USCA) which provides, in part, as follows:

"(1) For the purposes of taxation in respect of any person, or of his personal property, income, or gross income, by any State, . . . such person shall not be deemed to have lost a residence or domicile in any State, . . . solely by reason of being absent therefrom in compliance with military or naval orders, or to have acquired a residence or domicile in, or to have become a resident in or a resident of, any other state, . . . while, and solely by reason of being, so absent. For the purposes of taxation in respect of the personal property, income, or gross income of any such persons by any State, . . . of which such person is not a resident or in which he is not domiciled, . . . personal property shall not be deemed to be located or present in or to have situs for taxation in such State, Territory, possession, or political subdivision, or district . . . . "

Section 514, supra, was considered by the United States Supreme Court in the case of **Dameron v. Brodhead,** 345 U. S. 322, 73 S. Ct. 721, 32 ALR 2d 612. In that case the Court held that the above statute, which provides that personal property of nonresident personnel of the military service shall not be deemed to have a situs for taxation in a state in which they may be required to be present by virtue of their service, prevents such state from imposing a property tax on such personnel's personal property within the state irrespective of whether or not the state of his domicile has imposed a like tax. In Quarterly Report of the Attorney General, Volume 81 page 16, this office, in view of Section 514(1), supra, and using the **Dameron** case as authority, held that motor vehicles of nonresident personnel stationed in Alabama in compliance with military or naval orders are not subject to ad valorem tax even though Alabama license tags for such vehicles are purchased. See also **California v. Buzard,** 382 U. S. 386, 86 S. Ct. 478, and Quarterly Report of the Attorney General, Volume 122, page 28.

Although not specifically asked in your inquiry, the problem presented raises the question as to whether or not a serviceman whose domicile is in a state other than Alabama and who is stationed in Alabama in compliance with military or naval orders is entitled to claim a homestead exemption.

Careful research does not disclose any Alabama case wherein this specific point of law has been decided. There are no statutory or constitutional provisions which provide the answer. Title 51, Section 15, Code of Alabama 1940, provides as follows:

"§ 15. Homesteads.—Homesteads, as defined by the constitution and laws of the State of Alabama, are hereby exempted from all state ad valorem taxes. In no case shall the exemption herein made apply to more than one person, head of the family, nor shall said exemption exceed two thousand dollars in assessed value, nor one hundred sixty acres in area."

For constitutional provisions relating to homestead exemptions, see Sections 205 and 206, Constitution of Alabama 1901.

In 40 CJS, Homestead, page 443, in discussing the residential requirement necessary to claim a homestead exemption, it is stated:

> "Unless expressly required by constitutional or statutory provision, citizenship is not necessary to entitle a resident of the state to the benefit of a homestead exemption.
>
> "Where the constitution or statute requires residence, see infra § 18, but is silent as to political status, all residents of the state are entitled to the benefit of the homestead exemption, whether or not entitled to the political and civil rights of citizens, ...
>
> " . . . In any event, permanent residence in the state is sufficient whether or not, under nice distinctions, the place where the home owner lives is called his domiciliary residence or merely his residence. So too it is held in some states that actual residence in the state is sufficient, notwithstanding legal domicile is in another state, and conversely, that legal domicile in the state is insufficient where actual residence at the time is in another state; but in other states the distinction between domicile and actual residence is not recognized in applying the homestead laws."

In an old California case decided in 1863, **Dawley v. Ayers,** California Reports, Volume 23, Tuttle, page 110, the Supreme Court of California held that the fact that a husband and wife do not intend to reside permanently in California does not prohibit them from enjoying the benefit of the homestead law; that they are entitled to the right of homestead so long as they claim and use the property as such and actually reside within the state. The Court stated:

> "The homestead law is not limited in its operation to any class, but is universal in its application; and all classes of persons are entitled to its benefits, without any distinction as to citizenship, or capability of becoming citizens. So long as the parties actually reside in the State, and use the property as a home, they cannot be denied the benefits secured by the law."

In the absence of any Alabama case law or constitutional or statutory provisions to the contrary, it is my opinion that domicile in Alabama is not necessary for a resident of this state to be entitled to the homestead exemption provided the claimant meets all other requirements. See 40 CJS, Homestead, page 458, et seq., and Quarterly Reports of the Attorney General, Volume 119, page 44, and Volume 124, page 19.

The premises considered, your question is answered in the negative; that is, servicemen whose domicile is in a state other than Alabama and who are stationed in Alabama in compliance with military or naval

orders are not liable for ad valorem tax on their personal property even though they are entitled to and claim homestead exemptions.

Very truly yours,
MacDONALD GALLION
Attorney General

June 13, 1967

Hon. Bill Cassity
Administrator
Ala. Liquefied Petroleum Gas Board
Associations Building
Montgomery, Alabama 36102

Liquefied Petroleum Gas Board — Permits.

1. An applicant for a permit from the LP Gas Board is not required to furnish a financial statement to said Board.

Opinion by Assistant Attorney General Bradley.

Dear Sir:

Your request for an official opinion of this office bearing date of June 5, 1967 is as follows:

> "A situation has developed which requires an official ruling by the Attorney General regarding applications for LP-gas permits.
>
> "A recent ruling of the Board on an application has been challenged, and we would like to have an answer to this question: 'Does this Board have authority to deny an application for a permit to engage in the LP-gas business on the grounds that the Board considers the applicant to have insufficient financial resources, based on financial statement submitted with application?'
>
> "We will appreciate your giving us a ruling on this matter at your earliest convenience."

Your question is answered in the negative.

Act No. 220, General Acts of Alabama 1965, page 305, and more particularly, Sections 6 and 7 of said Act, prescribe the requirements to be met by an applicant before a permit can be issued by the LP Gas Board.

Nowhere in said Act No. 220, supra, do I find any statutory requirement that an applicant must furnish a financial statement to the Board along with his application for a permit. Neither do I find any statutory

authority for the Board to deny a permit to an applicant on the grounds that he either has not filed a financial statement or that the financial condition of the applicant does not come up to the expectations or requirements of the Board.

The statute in question (Act No. 220, supra), provides that an applicant for a permit make application on a form provided by the Board, file with the Board a bond and insurance policy in amounts prescribed therein and with coverages required by said Act, and a permit fee.

This is all the statute in question requires of an applicant.

No financial statement is required by said Act No. 220, supra, to be furnished to the Board.

Very truly yours,
MacDONALD GALLION
Attorney General

June 14, 1967

Honorable Leonard Beard
Director
State Planning and Industrial Development Board
State Office Building
Montgomery, Alabama 36104

Bonds — Funds — Industrial Development — Municipalities.

1. Competitive bidding is required in the expenditure of funds derived from the sale of revenue bonds authorized by the Cater Act or the Wallace Act for labor, services, work or the purchase or lease of materials, equipment, supplies and other personal property, involving $500.00 or more.

Opinion by Assistant Attorney General Gish.

Dear Sir:

Your request for an official opinion dated May 19, 1967 is as follows:

"It is respectfully requested that an opinion be rendered pertaining to Act No. 217, enacted during the 1967 Special Session of the Alabama Legislature.

"This bill requires, in part, that all expenditure of funds of whatever nature for labor, services, or for the purchase or lease of materials, equipment, supplies, or other personal property, involving five hundred dollars ($500.00) or more, made on behalf of the governing bodies of the municipalities of the State and the governing boards of instrumentalities of munici-

palities shall be made under contractural agreement entered into by free and open competitive bidding, or sealed bids, to the lowest responsible bidder.

"The opinion requested is whether or not this bid law applies to the expenditure of funds obtained through the sale of industrial revenue bonds under the provisions of Act No. 648, by the 1949 Legislature, as amended, and known as the Cater Act; and Act No. 756, by the 1951 Legislature, as amended, and known as the Wallace Act.

"As this opinion has been requested by a large manufacturer who is contemplating placing a plant in Alabama, and as this is a vital point in the use of revenue bond financing of plants in Alabama, your early opinion will be appreciated."

The recently enacted statute to which your request refers is Act No. 217, Acts of Alabama 1967, approved May 10, 1967.

Section 1 of said Act reads, in part, as follows:

". . . . . All expenditure of funds of whatever nature for labor, services, or work, or for the purchase or lease of materials, equipment, supplies, or other personal property, involving five hundred dollars ($500.00) or more, made by or on behalf of any state trade school, state junior college, state college or university under the supervision and control of the State Board of Education, the City and county boards of education, the county boards of revenue or other similar county governing bodies, **and the governing bodies of the municipalities of the state, and the governing boards of instrumentalities of counties and municipalities, including** waterworks boards, sewer boards, gas boards, and other like utility boards and commissions except as hereinafter provided, shall be made under contractual agreement entered into by free and open competitive bidding, on sealed bids, to the lowest responsible bidder; . . . . . " (Emphasis Supplied.)

The Cater Act, Act No. 648, Acts of Alabama 1949, page 991, as amended, is now codified as Title 37, Chapter 17, Code of Alabama 1940, Recompiled 1958. This statute authorizes a municipality to create an industrial development board with power to acquire, own, lease and dispose of properties for the purpose of promoting industry and development trade by inducing manufacturing, industrial and commercial enterprises to locate within this State. Such a board is a public corporation, the funds of which are controlled by its board of directors who are appointed by the municipal governing body. Surplus funds are paid to the municipality which organized the corporation. Upon dissolution of an industrial development board the title to its funds and properties vests in the municipality.

Therefore, an industrial development board created under Chapter 17, supra, is an instrumentality of the municipality within the meaning of Act No. 217, supra.

The Wallace Act, Act No. 756, Acts of Alabama 1951, page 1307, as amended, is now codified as Title 37, Chapter 10, Article 12, Code of Alabama 1940, Recompiled 1958. This statute grants to the governing body of a municipality powers similar to those conferred upon an industrial development board by the Cater Act. See **Newberry v. City of Andalusia, et al.,** 257 Ala. 49, 57 So. 2d 629.

Premises considered, I am of the opinion that the provisions of Act No. 217, supra, apply to the expenditures of funds obtained through the sale of revenue bonds authorized by either the Cater Act or the Wallace Act.

Very truly yours,
MacDONALD GALLION
Attorney General

June 28, 1967

Honorable J. R. Meriwether
Attorney at Law
Post Office Box 10366
Prichard, Alabama

Fees — Municipalities.

1. Municipal ordinances enforcing police regulations have force and effect in the police jurisdiction of the municipality.

2. A municipality may, by ordinance, fix reasonable fees for making building, plumbing, electrical and gas inspections within its police jurisdiction.

Opinion by Assistant Attorney General Gish.

Dear Mr. Meriwether:

Your request for an official opinion, under date of May 15, 1967, is as follows:

> "The Town Council of the Town of Satsuma has instructed me to write to you for your legal opinion on the questions hereinafter set forth.
>
> "The Town Council has by reference ordinance adopted the Southern Standard Building Code, Plumbing Code, Gas and Housing Code and the National Electrical Code, and has made said codes applicable to the Town and its police jurisdiction. All of said Codes provide for permit fees, and the permit fee for the police jurisdiction is, in each instance, one-half the amount charged within the corporate limits.
>
> "The Town of Satsuma furnishes both police and fire protection in the police jurisdiction and makes actual inspections in

connection with all permits issued under the aforesaid codes. The building inspector represents that the amount paid for such permits in the police jurisdiction covers only the actual cost of making inspections under each such permit, and, in some instances, probably does not cover the actual cost of making the inspection.

"The Town Council requests your legal opinion on the following questions:

"Does the Town of Satsuma have the authority, under its police regulatory powers, to require a permit and to make a charge therefor, for work to be done in its police jurisdiction, in each of the following areas:

"1. Building Inspections?

"2. Plumbing Inspections?

"3. Electrical Inspections?

"4. Gas Inspections?

"Your opinion, separately, as to each of the four questions will be greatly appreciated."

Under its police powers granted by Title 37, Section 455, Code of Alabama 1940, the Town of Satsuma was authorized to adopt the codes to which your request refers. See also Title 37, Section 436, Code of Alabama 1940.

It was proper to adopt these codes by reference ordinance without setting out the full text thereof in the ordinance. See Title 37, Section 462, Code of Alabama 1940, as amended by Act No. 268, Acts of Alabama 1961, page 287.

Title 37, Section 9, Code of Alabama 1940, reads in part as follows:

" . . . Ordinances of a city or town enforcing police or sanitary regulations and prescribing fines and penalties for violations thereof, shall have force and effect in the limits of the city or town and in the police jurisdiction thereof, and on any property or rights of way belonging to the city or town."

Therefore, the building, plumbing, electrical, gas and housing codes, here considered, have force and effect within the police jurisdiction as well as the corporate limits of the Town of Satsuma.

A reasonable fee may be imposed by a municipality for making inspections and issuing permits in its police jurisdiction under the codes to which your request refers. Cf **Chadwick v. Town of Hammondville,** 270 Ala. 618, 120 So. 2d 899, and **Lewis et al. v. Jenkins,** 215 Ala. 680, 112 So. 205.

For these reasons each of your questions is answered in the affirmative.

Very truly yours,
MacDONALD GALLION
Attorney General

June 28, 1967

Honorable J. W. Patton, Jr.
Attorney at Law
405 Realty Building
Bessemer, Alabama 35020

Employment — Employers and Employees — Labor — Municipalities.

Labor relations of a hospital operated by a public corporation created by the municipality discussed generally.

Opinion by Assistant Attorney General Gish.

Dear Mr. Patton:

Your request for an official opinion, dated June 21, 1967, is as follows:

> "I am a member of the Board of Trustees of The Hospital Building Authority of the City of Bessemer, Alabama, and attorney for the Board of Trustees.
>
> "The Hospital Building Authority of the City of Bessemer, Alabama, was incorporated under the authority of Article 5A of Title 22 of the 1940 Code of Alabama, Recompiled 1958 (Acts of Alabama, 1961, Page 134 et seq.). This corporation, through its Board of Trustees, operates and maintains public hospital facilities in the City of Bessemer, Alabama, under the name of The Memorial Hospital of Bessemer, Alabama. The statute under which this corporation was organized provides that the corporation is a political subdivision of the State of Alabama.
>
> "Certain labor unions are now engaged in efforts to organize a union among the employees of the hospital and requests have been made to the Board of Trustees to meet with representatives of the union. The Board of Trustees has informed the representatives of the union that it cannot enter into a collective bargaining agreement with a labor union and our basis for this is the case of **International Union of Operating Engineers, Local Union No. 321 vs. Water Works Board of Birmingham,** 163 So. 2d 619, 276 Ala. 462.
>
> "Would you please advise whether in your opinion the employees of our hospital are public employees within the meaning of the Solomon Bill, Acts of Alabama, 1953, page 974, Title

55, 1940 Code of Alabama, Section 317 (2), and whether they would be subject to the penalities of this Act if they joined or participated in a labor union or labor organization.

"If the employees are subject to the penalties of the Act, I would like your interpretation of the provision of the Act that an employee who joins or participates in a labor union forfeits his employment rights. Does this mean that the employee can no longer continue as an employee of the hospital?"

Your purpose will be better served if you have from me a general discussion of the applicable law rather than answers to your specific questions.

The public corporation to which your request refers was created under and is controlled by Act No. 109, Acts of Alabama 1961, page 134, as amended by Act No. 834, Acts of Alabama 1965, page 1569, as an agency or arm of the City of Bessemer.

Therefore, I am of the opinion that the employees of your hospital are municipal employees within the meaning of the Solomon Act, Act No. 720, Acts of Alabama 1953, page 974.

The fact that Act No. 720, supra, exempts from its operation municipal and certain other public employees does not authorize union membership for such employees. Quarterly Reports of Attorney General, Volume 87, page 35, and Volume 92, page 38.

Therefore, I am of the opinion that the Board of Directors of the Hospital Building Authority of the City of Bessemer may condition employment by the Memorial Hospital of Bessemer, upon nonmembership in a labor union. See Quarterly Report of Attorney General, Volume 87, page 35, supra.

The Supreme Court of Alabama has held that a public agency may not bargain with and enter into enforceable collective agreements with labor unions concerning wages, hours and conditions of employment of its employees in the absence of express constitutional or statutory authorization to do so. **International Union of Operating Engineers, Local Union No. 321 (AFL-CIO) v. Water Works Board of the City of Birmingham,** 276 Ala. 462, 163 So. 2d 619. I find no statute or constitutional provision authorizing the public corporation here considered to enter into such contracts.

Therefore, I am of the opinion that the Hospital Building Authority of the City of Bessemer may not enter into working agreements with labor unions.

I trust that this opinion furnishes the desired information.

Very truly yours,
MacDONALD GALLION
Attorney General

INDEX

QUARTERLY REPORT OF THE ATTORNEY GENERAL FOR THE PERIOD FROM APRIL 1, 1967 THROUGH JUNE 30, 1967

Page

— A —

ACTS OF ALABAMA:

GENERAL AND LOCAL ACTS 1953:
Act No. 720, page 974 (Labor Unions) 58

GENERAL AND LOCAL ACTS 1956 (Special Session):
Act No. 31, page 300 (Mobile County) 34

GENERAL AND LOCAL ACTS 1965 (Special Session):
Act No. 116, page 157 (Licenses) 41

GENERAL AND LOCAL ACTS 1965:
Act No. 220, page 305 (L. P. Gas Board) 53

GENERAL AND LOCAL ACTS 1966 (Special Session):
Act No. 434, page 579 (Motor Vehicle) 14

GENERAL AND LOCAL ACTS 1967:
Act No. 105, H. B. 172 (Shelby County) 48
Act No. 217, H. B. S 23 (Bids) 54

ALABAMA ABC ACT:

Private club in wet county—sale and consumption of legalized liquor 31

— B —

BIDS:

Expenditure of funds by cities derived from revenue bonds —necessity of bids 54

BONDS:

Bonds issued for new sewer system creates "debt" of city 7

— C —

CODE OF ALABAMA 1940, RECOMPILED 1958:

Title 7A

Sections 9-408(1) (Uniform Commercial Code) 34, 46

Title 10
Section 142 (Intoxicating Liquors) 31

Title 22
Sections 26 and 87 (Deaths) 43

Title 28
Section 2 (Insurance) 24

Title 37
Section 9 (Municipalities) 56
Section 525 (Improvement Assessments) 19
Sections 815-830(1) (Industrial Development) 54

Title 41
Section 211 (Officers) 22

Title 51
Section 15 (Homestead Exemptions) 50
Sections 704 and 713 (Motor Vehicles) 25
Sections 830 and 848 (Licenses) 36
Section 852, as amended (Veterans Exemption) 11

Title 52
Sections 62 and 132 (Schools) 32

COLLEGES AND UNIVERSITIES:
Purchase of property by state—satisfaction of tax lien 17

CONSTITUTION OF 1901:
Section 225, Amendment 107 (Municipal Bonds) 7

CONSTITUTIONALITY:
Shelby County pistol permit fee—constitutionality and disposition to sheriff's fund 48

CONTRACTS:
Contract for furnishing ambulance service is not contract of insurance 24

CORONERS:
Investigation of deaths—signing death certificates and removal of bodies 43

CORPORATIONS:
L. P. Gas licensee corporation merely changing corporate name—new permit fee not required 9

COSTS AND FEES:

Financing statements or agreements under Uniform Commercial Code cannot be withdrawn—termination and new agreements—amount taxable 46

Shelby County pistol permit fee—constitutionality and disposition to sheriffs' fund 48

Uniform Commercial Code—disposition of filing fees in Mobile County 34

COUNTIES:

Employment of member of board of revenue on project partly financed by United States 22

Tax on motor vehicles—proper distribution of receipts to cities and counties 25

COUNTY BOARDS OF EDUCATION:

Expenditure of funds—responsibility of county boards and county superintendents of education 32

COUNTY HEALTH OFFICERS:

Investigation of deaths—signing of death certificates and removal of bodies 43

COUNTY SUPERINTENDENTS OF EDUCATION:

Expenditure of funds—responsibility of county boards and county superintendents of education 32

— D —

DEATHS:

Investigation of deaths—signing of death certificates and removal of bodies 43

— E —

EMPLOYEES AND EMPLOYERS:

Municipal hospitals—employees as members of labor union 58

EXEMPTIONS:

License exemptions for disabled veterans—dates of service applicable thereto 11

Military personnel stationed in state—homestead exemption and personal property tax 50

— H —

HEALTH AND HEALTH DEPARTMENTS:

Cold drink dispensing machines—when classified as "food handling establishments" 28

Mental Health Board—tort claims brought before State Board of Adjustment 45

HOMESTEADS:

Military personnel stationed in state—homestead exemption and personal property tax 50

HOSPITALS:

Municipal hospitals—employees as members of labor unions 58

— I —

INDUSTRIAL DEVELOPMENT:

Expenditure of funds by cities derived from revenue bonds—necessity of bids 54

INSURANCE:

Contract for furnishing ambulance service is not contract of insurance 24

INTOXICATING LIQUORS:

Private club in wet county—sale and consumption of legalized liquor 31

— L —

LABOR:

Municipal hospitals—employees as members of labor union 58

LICENSES:

Applicant for permit from L. P. Gas Board—furnishing financial statement 53

License exemption for disabled veterans—dates of service applicable thereto 11

Licensee moving to new location in same county requiring higher license—credit allowable 36

L. P. Gas licensee corporation merely changing corporate name—new permit fee not required 9

Municipal ordinances adopting building code—jurisdiction and permit fees 56

Special licensing of "antique vehicles"—procedure for 41

LIQUEFIED PETROLEUM GAS BOARD:
Applicant for permit—furnishing financial statement 53
Licensee corporation merely changing corporate name—new permit fee not required 9

— M —

MENTAL HEALTH BOARD:
Tort Claims—brought before Board of Adjustment 45

MILITARY AND NAVAL AFFAIRS:
Military personnel stationed in state—homestead exemption and personal property tax 50

MOBILE COUNTY:
Uniform Commercial Code—disposition of filing fees 34

MOTOR VEHICLES:
Special licensing of "antique vehicles"—procedure for 41
Tax on motor vehicles—proper distribution of receipts to cities and counties 25
Vehicle of Rescue Squad of City Fire Department—special lighting equipment authorized 14

MUNICIPALITIES:
Assessment by city for sewage improvement—appeal by property owner 19
Bonds issued for new sewer system—creates "debt" of city 7
Expenditure of funds derived from revenue bonds—necessity of bids 54
Hospital operated by—employees as members of labor union 58
Ordinances adopting building code—jurisdiction and permit fees 56
Tax on motor vehicles—proper distribution of receipts to cities and counties 25
Vehicle of Rescue Squad of Fire Department—special lighting equipment authorized 14

— O —

OFFICERS AND OFFICES:
Employment of member of board of revenue on project partly financed by United States 22

OPINIONS OVERRULED, MODIFIED AND DISTINGUISHED:
Quarterly Report of Attorney General, Volume 15, page 83 36
Quarterly Report of Attorney General, Volume 64, page 103 36

— P —

PHYSICIANS AND SURGEONS:
Investigation of deaths—signing death certificates and removal of bodies 43

PUBLIC SAFETY, DEPARTMENT OF:
Vehicle of Rescue Squad of City Fire Department—special lighting equipment authorized 14

— S —

SCHOOLS:
Receipts from vending machines in state institutions—use for scholarships and loans 21
Expenditure of funds—responsibility of county boards and county superintendents of education 32

SHELBY COUNTY:
Pistol permit fee—constitutionality and disposition to sheriffs' fund 48

SHERIFFS:
Shelby County pistol permit fee—constitutionality and disposition to sheriffs' fund 48

STATE BOARD OF EDUCATION:
Receipts from vending machines in state institutions—use for scholarships and loans 21

STATE AND STATE DEPARTMENTS:
Purchase of property by state—satisfaction of tax lien 17
Tort Claims against Mental Health Board—brought before Board of Adjustment 45

— T —

TAXATION:
Assessment by city for sewage improvement—appeal by property owner 19
License exemptions for disabled veterans—dates of service applicable thereto 11
Licensee moving to new location in same county requiring higher license—credit allowable 36
Military personnel stationed in state—homestead exemption and personal property tax 50

Purchase of property by state—satisfaction of tax lien 17
Special licensing of "antique vehicles"—procedure for 41
Tax on motor vehicles—proper distribution of receipts to cities and counties 25

— U —

UNIFORM COMMERICAL CODE:
Filing fees for Mobile County—disposition of 34
Financing statements or agreements cannot be withdrawn—termination and new agreements—amount taxable 46

— V —

VENDING MACHINES:
Cold drink dispensing machines—when classified "food handling establishments" 28
Receipts from vending machines in state institutions—use for scholarships and loans 21

VETERANS:
License exemptions for disabled veterans—dates of service applicable thereto 11

— W —

WORDS AND PHRASES:
Cold drink dispensing machines—when classified as "food handling establishments" 28
Contract for furnishing ambulance service is not "contract of insurance" 24

INFORMAL OPINIONS

During the period covered by this Quarterly Report of the Attorney General, April 1, 1967 through June 30, 1967, the Attorney General rendered the following informal opinions. These informal opinions are not published in the Quarterly Report.

Subject Matter	Addressee	Date	File No.
CONSTITUTIONALITY			
Circuit Courts—Counties	Thomas H. Jackson	Jun. 13	614
District Attorneys—Duties	Lewis H. West	Jun. 13	9
COSTS AND FEES			
Mental Health Clinic—Fees	J. S. Tarwater	Jun. 29	Mental Health
Sheriffs—Attendance	J. C. Carr	Jun. 14	611
Solicitors—Trial De Novo	R. F. Dobbins	May 24	343
Water Safety—Solicitors and Trial Tax	Howard Kirby	Apr. 28	145
COUNTIES			
Bids—Highways	John W. Starnes	May 9	584
Civil Defense—Appropriations	William F. Killough	Apr. 6	458
Convicts—Labor	Wiley P. Henderson	May 29	Dist. Atty.
Districts—Funds	John W. Starnes	May 29	584
Funds—Streets	M. N. Brown	May 30	578
Judges' Assistants—Payment	Calvin L. Vest	May 30	577
Judges' Vacancies—Payment	James E. Moore	Jun. 9	272
Legal Notices—Contracts	Ralph W. Havard	May 29	574
Motor Vehicles—T. B. Assns.	H. W. Suddath	Apr. 5	457
Officers and Employees—Road and Bridge Fund	Walter Joe James, Jr.	Apr. 5	451
Polling Place—Deputy Sheriffs	J. Gorman Houston, Jr.	Jun. 6	591
Wet-Dry Elections—Watchers	T. C. Almon	May 3	146

Subject Matter	Addressee	Date	File No.
CRIMINAL LAW			
Constables—Arrests	C. S. Thomas	Apr. 27	503
Courts—Venue	Paul W. Brunson	May 31	576
Justice of the Peace—Appeal Bonds	R. A. Hail, Jr.	May 10	256
Pardon and Paroles—Notices	David M. Sandlin	Apr. 12	476
Search Warrants—Mayors	J. A. Lamberth	May 12	551
Sheriffs—Arrests	C. P. Walker	May 8	545
FUNDS			
Pistol Permits—Sheriffs	Conrad M. Fowler	Jun. 21	585
Solicitors—Legal Secretaries	Ralph P. Eagerton	May 1	Ex. of Accts.
HEALTH AND HEALTH DEPARTMENTS			
Mental Health Clinics—Fees	J. S. Tarwater	Jun. 29	Mental Health
Optometrist—Advertising	Howard W. Smith	Jun. 15	619
Water Pollution—Control	Ira L. Myers	May 3	Health Dept.
INFANTS			
Adoption—Grandparents	Reo Kirkland	Apr. 18	491
INSURANCE			
Deposits—Release	Agnes Baggett	Jun. 14	St. Treas.
Deposits—Release	Agnes Baggett	Jun. 28	St. Treas.
Hospitals—Employees	Jack Huddleston	Jun. 8	601
MUNICIPALITIES			
Assessments—Limitation of Actions	Bill Bradley	May 23	32
Bids—Procedures	Bill Bradley	Jun. 30	32
Bids—Sewer and Water Boards	George T. Mills, Jr.	Jun. 30	644
Bids—Time Applicable	Maurice C. West	Jun. 30	645
Government—Elections	William R. Chapman	Apr. 17	479

Subject Matter	Addressee	Date	File No.
(Same)	J. L. Hardwick	Apr. 24	519
Health Regulations—Property	J. Wagner Finnel	May 22	156
Highways—Traffic Signals	L. B. Sullivan	May 31	579
Housing Authority—Labor Unions	Thomas M. Galloway	May 19	565
Licenses—Exemptions	Pierre Pelham	Jun. 9	164
Licenses—Gasoline Sales	Steve Sartain	Jun. 14	616
Parks—Sales	Arnold Teks	May 10	189
Parks—Usage	Vincent McAlister	May 18	562
Police and Firemen—Retirement	Robert M. Field	May 10	22
Sales Tax—Jurisdiction	Louise K. Traylor	May 24	568
Streets—Universities	James K. Hagood	Apr. 20	383
Suits—Attorneys	W. J. Rodgers	Jun. 1	539
OFFICERS AND OFFICES			
Bessemer District Attorney—Salary	James D. Hammonds	May 8	Dist. Atty.
Board of Registrars—Compensaton	Charlie E. Ford	May 1	521
Board of Registrars—Municipalities	Clyde M. Steele	Apr. 10	462
Commissioners Court—Vacancies	J. O. English	Apr. 12	474
Constables—Garnishments	H. D. Denham	Jun. 9	593
Councilmen—Coroners	Dale M. Gamberg	May 10	214
Councilmen—Utility Boards	Loyal Baker	May 8	529
Deputy Sheriffs—Age	Thelton Holliman	Jun. 19	633
Hospital Administrator—Salary after death	J. Gorman Houston, Jr.	Jun. 21	591
Juries—Meetings	Charles Brumbeloe	Jun. 28	642
Jury Commission—Compensation	R. F. Dobbins	May 23	343
Legislators—Teachers	Kermit A. Johnson	Apr. 17	511
Mental Health Board—Corporations	Walter Carlos Anderton	May 10	530
Municipalities—Public Utilities	Herman W. Maddox	May 11	540
Notaries Public—Bonds	T. C. Almon	Apr. 17	146

Subject Matter	Addressee	Date	File No.
Payment Bi-Weekly—Compensation	Mylan R. Engel, et al.	Jun. 29	216
State Auditor—Housing Authorities	Melba T. Allen	Apr. 27	St. Aud.
Tax Assessors—Water and Sewer Boards	Robert S. Milner	Jun. 5	33
SCHOOLS			
Baseball Field—Funds	Raymond W. Bates	Jun. 12	608
Boards of Education—Elections	Sid McDonald	Jun. 19	615
Property—Reversion	Allen Thornton	Jun. 29	643
Property—Rights-of-Way	Cranford H. Burns	May 19	567
Pupils—Age	Fred Hubbard	Jun. 16	613
Stadium—Three-Mill Tax	J. Burney Bishop	Apr. 18	483
Teachers—Vacations	Alan C. Burns	Apr. 25	300
Training School—Group Homes	Dorothy P. Weiss	May 15	561
Vocational—Employees	J. F. Ingram	Apr. 11	Ed. Dept.
STATE AND STATE DEPARTMENTS			
Credit Unions—State and Federal	Robert M. Cleckler	Jun. 7	Bank. Dept.
Mart Authority—Armories	H. A. Coleman	Jun. 30	646
Oil and Gas Board—Attorneys	Philip LaMaroux	Jun. 8	Oil & Gas Bd.
Professional Meetings—Expenses	John Graves	May 31	St. Compt.
Property—Insane Hospitals	J. S. Tarwater	Apr. 25	Health Dept.
Property—Installment Payments	Claude D. Kelley	Apr. 20	Conserv. Dept.
Publicity—Funds	Ed Ewing	Apr. 5	384
Retirement—Consultant	Raymond D. Fowler	Jun. 13	Retire. Dept.
Rights-of-Way—Purchases	H. R. Foster	May 1	H'way Dept.
Safety Coordinating Committee—Highways	Paschel P. Vacca	Apr. 14	523
Small Loan Department—Loans	William P. Boggs	May 12	558
T. B. Hospitals—Expense Accounts	Ralph P. Eagerton	May 10	Ex. of Accts.

Subject Matter	Addressee	Date	File No.
TAXATION			
Assessors and Collectors—Compensation	Ralph Ford	May 17	406
Boards of Equalization—Records	E. W. Lee	Jun. 27	388
Filing Tax—Long Term Lease	Ashford Todd	Apr. 4	453
Hospitals—Reductions	Frank J. Green	Apr. 25	223
Licenses—Transfers	T. O. Collins	Apr. 10	460
Stock Shares—Collections	Otis R. Burton	Apr. 18	514
Tax Collector—Assistants	W. J. Johnson	May 3	427